



Superior Court of California County of Fresno



Study Guide

For

Judicial Assistant

Written Examination

Appeals

Filing an Appeal

A party usually must wait for a dismissal of the case or a final judgment following trial before appealing. However, the defendant may appeal an order affecting his or her substantial rights, such an order sustaining a demurrer or granting a summary judgment motion.

An appeal from a judgment of a Superior Court or from a particular part of the judgment begins by serving and filing with the Clerk of the Court a Notice of Appeal from that judgment. The notice must be signed by the appellant or appellant's attorney and must state in substance that the appellant appeals from a specified judgment or a particular part of the judgment. A Notice of Appeal is liberally construed in favor of its sufficiency.

Generally, an appeal must be filed on or before the earliest of the following dates:

- (1) 60 days after the mailing by the Clerk of the Court of a document entitled Notice of Entry of Judgment;
- (2) 60 days after the date of service of the Notice of Entry of Judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or
- (3) 180 days after the date of entry of the judgment.

A file-stamped copy of the judgment may be used in place of the Notice of Entry.

After a Notice of Appeal is filed, the Clerk of the Superior Court "shall forthwith" mail a notification of the filing of the Notice of Appeal to the attorney of record of each party besides the appellant; or if the party is not represented by an attorney, then to that party at their last known address. The notification shall state the number and title of the action or proceeding and the date the notice of appeal was filed.

The Clerk of the Superior Court "shall also forthwith" transmit a notification of the filing of the Notice of Appeal to the Clerk of the Appellate Court. The notification shall state the names, addresses, telephone numbers, and California State Bar membership numbers of all attorneys of record in the case, if that information is available, and the parties whom they represented in the Superior Court. A copy of the Notice of Appeal can serve as the notification if it contains all the pertinent information.

The Clerk of the Superior Court also transmits any filing fee to the Appellate Court with the notification of the filing of the Notice of Appeal.

Criminal Appeals

In criminal cases, an appeal begins by filing a written Notice of Appeal with the Clerk of the Superior Court within 60 days after the rendition of the judgment or the making of the order. Whenever a Notice of Appeal is received by the Clerk of the Superior Court after the expiration of the period prescribed for filing such notice, the clerk shall mark it "Received (date) but not filed" and advise the party seeking to file the notice that it was received but not filed because the period for filing an appeal had elapsed.

The Clerk's Record on Appeal – Civil Cases

The Clerk's record on appeal consists of all papers filed or lodged with the Clerk of the Superior Court, all minutes in the case, all written instruments submitted by any party (whether given or refused) or prepared by the court, and all exhibits admitted into evidence or refused.

The Clerk's Record on Appeal – Criminal Cases

If an appeal is taken by the defendant from a judgment of conviction, or if the appeal is taken by the People from an order granting a motion for a new trial, and the case is a noncapital case, the record on appeal shall include a clerk's transcript and a reporter's transcript. The clerk's transcript shall contain copies of:

- (a) a notice of appeal, any certificate of probable cause and any request for additional record;
- (b) the indictment, information, or accusation with any amendments;
- (c) any demurrer;
- (d) any motion for new trial;
- (e) all court minutes relating to the action;
- (f) the verdict;
- (g) the judgment or order appealed from and any abstract of judgment – commitment;
- (h) all written instructions given or refused indicating on each instruction the party requesting it;
- (i) all written communications between the judge and the jury;
- (j) any written opinion of the court;
- (k) any transcript of an electronic sound or sound-and-video recording provided to the jury;
- (l) each written motion made by defendant and denied, and related affidavits, search warrants, and returns, and transcripts of preliminary hearings or grand jury hearings;
- (m) probation officer reports; and
- (n) any certified records of a court or of the Department of Corrections introduced in evidence to prove a prior conviction or prior prison term.

Appeals in Death Penalty Cases

There is an automatic appeal to the California Supreme Court in death penalty cases. Upon judgment, the Clerk of the Superior Court shall "forthwith" mail certified copies of the

judgment imposing the penalty of death to the Clerk of the Supreme Court and to the Attorney General.

Clerk's Transcript in a Death Penalty Case

The entire record is to be prepared including the clerk's and reporter's transcript. The clerk's transcript shall include all documents filed or lodged in the court files in the case, including all items listed in California Rule of Court 33(a), and juror questionnaires of all potential jurors, regardless of whether the jurors were selected to sit on the case.

All documents filed confidentially under the Penal Code shall be sealed and copies provided only to the reviewing court and to counsel for the defendant to whom the documents relate. All transcripts of in camera proceedings shall be sealed and copies provided only to the reviewing court and to counsel for those parties present at the proceedings.

Standards of Appellate Review

Appellate courts do not retry cases or hear new evidence. Instead, appellate courts review what occurred in the trial court to see if the proper procedures were followed and the proper law was applied. Because of the limited nature of this review, the issues properly raised on appeal are significantly different from those that are raised at trial. While the appellate court usually does not review factual issues, it does review the law and how it is applied to the facts and issues. The appellate court has the final word on the law and its application, such as the interpretation of a statute. It independently decides issues, such as whether the motion should have been granted, or if the case was properly dismissed rather than being allowed to go to trial.

The appellate court will reverse the judgment only if it finds the trial court committed legal errors that were prejudicial during the trial. For example, legal errors can occur in jury instructions, the admission or exclusion of evidence, or the failure to follow proper procedures. If the appellate court finds legal errors, it determines whether the errors were prejudicial. A legal error is considered prejudicial only if there is some reasonable chance that it was likely to have affected the result in the case. Minor legal errors are usually not grounds for a reversal.

Supreme Court Review

A party who is dissatisfied with the results on appeal can petition the California Supreme Court for review. (If a federal issue is involved, a party may file a petition with the U.S. Supreme Court to hear the case once the California Supreme Court denies review or decides the case.) With a few exceptions, such as death penalty appeals, the California Supreme Court is not required to take any particular case, and instead selects those cases it wishes to review.

Appellate Writs

As discussed above, most appeals involve cases that have been concluded in the trial court. However, a party can sometimes ask the Court of Appeal to issue an order, called a writ, requiring the trial court to modify one of its orders while the case is still ongoing.

Common writs filed in the Appellate Court include Writ of Mandate, Writ of Prohibition, and Writ of Habeas Corpus.

Small Claims Appeals

An appeal of a Small Claims Court judgment is a request to the Superior Court to reverse the decision of the Small Claims Court by having the case heard again. Generally, only the Defendant can appeal the judgment. A plaintiff does not have the right to appeal a small claims judgment except in certain circumstances such as where the defendant counter-claims and the plaintiff is the defendant on the counter-claim.

An appeal of the small claims judgment must be filed with the Small Claims Court Clerk within 30 calendar days of the date of the Small Claims decision or, if the decision is mailed, within 30 days of the date the Clerk mails the Notice of Entry of judgment. The case is heard in Superior Court and is treated as a new case. All the evidence and witnesses must be presented again.

On appeal, the claim is heard for the original amount. While the case is being appealed, the defendant does not have to pay the Small Claims Court judgment. If the defendant loses the appeal, the defendant must pay the plaintiff the amount of the judgment plus interest and costs.

If the court finds that the appeal was intended to harass or delay the plaintiff or to encourage the plaintiff to abandon the claim, the court may award the plaintiff's attorney's fees of up to \$1,000 and any actual lost earnings. The court may, if it wishes, award the cost of lodging and transportation incurred in connection with the appeal up to \$1,000, following a hearing on the matter.

An appellant may abandon an appeal by filing a written abandonment thereof at any time. After an appeal has been decided, the Clerk of the reviewing court shall remit or send a certified copy of the judgment on appeal or order to the Clerk of the trial court.

Glossary of Terms - Appeals

Affirm. An act in which an appellate court finds that the judgment of a lower court is correct and should stand.

Appeal. A request to a higher court for review of a lower court's ruling. Generally, limited civil case matters are appealed to the Superior Court appellate division, superior court matters are appealed to the Courts of Appeal, and Court of Appeal matters are appealed to the state Supreme Court.

Appellant. The party who takes an appeal from one court or jurisdiction to another.

Appellate Court. A court having jurisdiction of appeal and review.

Record on Appeal. A copy of the pleadings, exhibits, orders, or decrees filed in a case in a trial court, and a transcript of the testimony taken in the case.

Remand. To send back. The act of an appellate court when it sends a case back to the trial court and orders the trial court to conduct limited new hearings or an entirely new trial, or to take some other further action.

Remittitur of Record. The transfer of the records of a case from a Court of Appeal to the original trial court for further action or other disposition as ordered by the appellate court.

Respondent. The person against whom an appeal is made; the responding party in a dissolution, nullity, adoption, probate matter, or to any petition.

Writ of Certiorari. An order by an appellate court granting or denying a review of judgment.

Civil

Basis for California Law

The structure of California law is based on English law, Spanish law, and common law. The common law is all the statutory and case law background of England and the American colonies that existed before the American Revolution in the late 1700's.

California uses a codification system to collect and systematically arrange its laws by subject. For instance, similar laws can be found grouped together under the Business and Professions Code, California Constitution, Civil Code, Code of Civil Procedure, Government Code, Health and Safety Code, Insurance Code, Penal Code, Probate Code, Vehicle Code, and Welfare and Institutions Code.

Common Law

Common law is distinguished from statutory law that is created by the enactments of the legislature. Common law is those principles and rules of action that derive their authority solely from usage and custom over the ages, or from the judgments and decrees of courts recognizing, affirming, and enforcing the old unwritten laws of England. In general, it is a body of law that develops through judicial decisions, as distinguished from legislative enactments. California Civil Code section 22.2 provides: "The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State."

Case Law

In addition to common law, California courts also rely upon case law in rendering decisions. Case law is the body of court cases that form the law of a particular subject. It includes reported cases that interpret statutes, regulations and constitutional provisions.

Statutory Law

Statutes are formal written enactments of a legislative body, whether federal, state, city, or county. An act of the legislature declaring, commanding, or prohibiting something is codified and put into law. A statute may mean a single act of a legislature or a body of acts that are collected and arranged according to a scheme. The word “statute” is used to designate the legislatively created laws as distinguished from case law or the common, unwritten laws.

Civil Summons

Generally, the filing and service of a summons and complaint starts a civil case. [In Family Law, it commences with the filing of a petition.] A “summons” is a form of court process issued in the course of a judicial proceeding. Its function is to notify the defendants that a lawsuit is pending against them, that they have a limited period of time within which to file a response, and of the consequences if they fail to do so.

The summons serves two functions.

- (1) It provides notice of the lawsuit, and
- (2) generally establishes personal jurisdiction over the defendant.

Any person who is at least 18 years of age and not a party to the action may serve the summons. [CCP 414.10] Sheriffs and marshals as well as private individuals who are not parties to the action may serve a summons. Personal delivery of a summons and complaint is deemed complete at the time of delivery.

Proof that a summons was served on a person within this state shall be made by affidavit of the person making the service. Substituted delivery of a summons and complaint is deemed complete on the 10th day after mailing a copy of the summons and complaint to the person served.

Once the summons and complaint has been served, the party served has 30 days to respond. The response can be a demurrer, motion to strike, motion to quash summons, motion to change venue, or the filing of an answer or cross-complaint. If the party served fails to respond within 30 days, a default may be entered and judgment taken.

If the original summons becomes lost after service has been made, and before it is returned to the court, an affidavit of the person who made the service and facts showing service was made must be presented to the court in order to establish valid service of the lost summons.

Proof of Service by Mail

The title of the document served and filed in a case, the name and address of the person making the service; and the date and place of mailing the document is required on a proof of service by mail.

Pleadings and Parties

Every pleading shall contain a caption setting forth the name of the court in which the action is brought and the title of the action. The pleadings allowed in civil actions are complaint, answer, demurrer and cross-complaint. A third person can intervene in an action by obtaining an order from the court allowing the filing of a complaint in intervention.

Any adult or entity (i.e., association, corporation, sole proprietorship, government agency, etc.) may bring an action against or be sued by any other adult or entity. Minors and incompetent persons may only appear as parties to a civil action by a guardian or conservator, or through a guardian ad litem appointed by the court. When a guardian ad litem is appointed by the court, the appointment shall be as follows: If a plaintiff, the appointment must be made before the summons is issued; if a defendant, the appointment must be made within 10 days after service of the summons. In the case of an insane or incompetent person who is a party to the action, appointment is made upon application of a relative.

Complaint

The complaint is the first written document that the plaintiff files with the court. It contains the claims the plaintiff has against the defendant, and is a statement of the facts constituting the cause(s) of action. Any complaint may be amended once by a plaintiff without costs at any time before an answer or demurrer is filed, or at any time after a demurrer is filed but before it is decided. Cross-complaints can be filed by defendants who are asserting their own claims against the plaintiff, and are usually filed at the time the defendant answers the plaintiff's complaint.

The contents of a complaint or a cross-complaint shall contain a statement of the facts in ordinary language setting forth the cause of action and a demand for judgment for which the pleader claims is they are owed or entitled.

Answer

An answer is the response of the defendant to the plaintiff's complaint denying the plaintiff's allegations. General denials must be filed when the monetary value in controversy does not exceed \$1,000. In all other cases the defendant must answer each of the plaintiff's allegations.

Demurrer

A demurrer is a pleading used to test the legal sufficiency of other pleadings. It raises issues of law, not fact, regarding the form or content of the opposing party's pleading (complaint, answer or cross-complaint). It is not the purpose of the demurrer to challenge

the truthfulness of the complaint. A demurrer can be used only to challenge defects that appear on the face of the pleading under attack. It can be used where the complaint itself is incomplete or discloses some defense that would bar recovery, such as where dates pleaded in the complaint show that the Statute of Limitations has run.

Motion to Strike

Motions to strike can be used to reach defects or objections to pleadings that are not challengable by demurrer. Complaints, cross-complaints, answers and demurrers are all subject to a motion to strike. A motion to strike can be used to attack the entire pleading or any part thereof – i.e., even single words or phrases can be stricken.

Motion to Quash Summons

A motion to quash summons is made when there is an improper summons or service. It is the only procedure that can be utilized at the outset of the action. Without valid service of summons, the court never acquires jurisdiction over the defendant. A defendant is under no duty to respond in any way to a defectively served summons. It makes no difference that the defendant had actual knowledge of the action.

Motion for Change of Venue

Venue rules designate a particular county (or counties) within California as the “proper” place for trial of the action. Since jurisdiction over a person is statewide, the venue rules serve to geographically narrow the place for trial. The purpose of venue rules is to give defendants some control in the choice of the forum. Otherwise, plaintiffs might file the action in some remote county where it would be difficult or impractical for a defendant to appear.

Upon motion, a court may change the place of trial when the court designated in the complaint is not the proper court; there is reason to believe that an impartial trial cannot be had therein; or when the convenience of witnesses and the ends of justice would be promoted by the change.

An action filed in a court that lacks jurisdiction shall be transferred to a court with proper jurisdiction if either party makes application and transfer fees are paid. At the time of transmittal of the papers and pleadings to another court, the Clerk is required to mail notice of the transmittal to all parties who have appeared in the action.

Summary Judgment and Summary Adjudication

A motion for summary judgment attacks the merits of the opposing party’s case. It allows use of declarations and other evidence to show that the claims or defenses pleaded are sham or without evidentiary support (i.e., that there is “no triable issue of material fact” or

that the only issue in dispute is one of law). If the court finds there is no triable issue of fact, it can terminate the action without the necessity of trial. A motion for summary judgment is one based on evidence outside the pleadings; e.g., contained in affidavits, declarations, discovery, documents, etc. It reaches the merits of the case without the matter actually going to trial. It is often described as a “paper trial”.

A motion for summary judgment may be made in any action or proceeding any time after 60 days have elapsed since the general appearance of the defendant.

A motion for summary adjudication allows the court to terminate a part of the entire action. Based on declarations and other evidence, the court may summarily adjudicate an issue of duty or that a particular cause of action or an affirmative defense or punitive damage claim is without merit.

Judgment

The definition of “judgment” in a civil action is the final determination of the rights of the parties in an action or proceeding. The Clerk shall mail a “Notice of Entry of Judgment” on any judgment or ruling in an action, upon order of the court, whether or not it is appealable. The party in whose favor the judgment is given may have a writ or order issued for the execution or enforcement of the judgment at any time within 10 years after the entry of the judgment.

A judgment creditor may apply to the court for an order for examination of a judgment debtor once every 120 days, or more frequently if good cause is shown to the court; service of the order of examination on the judgment debtor must be by personal service.

Entry of Default

Defendants are in default if they have been served with a summons and complaint, the time allowed by law for responding to the complaint has expired (usually 30 days), and the defendant has failed to file a pleading or motion permitted by law, or otherwise appear in the action. Once the time to respond has passed and a defendant has not responded to the complaint, the plaintiff may file a “Request to Enter Default” by the Clerk. This request must be supported by proper documentation. If everything is in order, the Clerk’s default is entered when the clerk signs the appropriate box on the request form. A clerk cannot refuse a proper request for entry of default.

An entry of default immediately cuts off a defendant’s right to appear in the action and participate in the proceedings.

A defaulted defendant has two options:

- (1) move to set aside the default and, if the motion is granted, to file an answer or demurrer;

- (2) after a default judgment is entered, the defendant can file an appeal of the default judgment.

When the Request to Enter Default is submitted, the clerk examines the proof of service to determine the date and manner in which the summons and complaint were served. The clerk must determine that the time allowed by law for defendant's response to the complaint has expired. The clerk determines this from the proof of service, showing how and when service was made. If service was personally made, service is complete when made. If service was by substituted service, service is complete on the 10th day after copies are mailed to the person served. If service is by mail with acknowledgment or receipt, service is complete on the date defendant signs the acknowledgment, if the acknowledgment is returned to the sender. If service was by publication, service is generally complete 30 days after publication is completed.

The clerk may reject an application for entry of default if it is incomplete or fails to comply with the statutory requirements for entry of default: i.e., proper service of summons; expiration of time to respond; and service of copies of the Request to Enter Default on defendant and counsel. The clerk has no authority to determine the accuracy of plaintiff's declarations or the legal sufficiency of the claimed service on defendant. The clerk must determine if an answer or other permitted response has been filed, but if none appears in the court file the clerk must enter the default.

Default Judgments by the Clerk

In certain limited cases, upon request by a plaintiff, the clerk may enter a default judgment without a court hearing or judge's action. Entry of a default judgment by the clerk is authorized only if the action is one "arising upon a contract or judgment"; seeks recovery of "money or damages only" in a fixed or determinable amount; and defendant was not served by publication. In all other cases, only the court upon an evidentiary hearing can grant a default judgment.

Glossary of Terms - Civil

Ad Litem. From the Latin: "For the suit"; for the purpose of the suit. A guardian *ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a minor or an adult who is incapacitated.

Answer (Pleading). The response of a defendant to the plaintiff's complaint, denying in part or in whole the allegations made by the plaintiff.

Arbitration. A process of dispute resolution in which a neutral third party, or a panel, renders a decision after a hearing at which both parties have an opportunity to be heard. Arbitration is less formal and less complex than traditional court proceedings. (Compare EARLY NEUTRAL EVALUATION, MEDIATION)

Attachment. The legal process of seizing another's property in accordance with a writ or judicial order for the purpose of securing satisfaction of a judgment yet to be rendered.

Change of Venue. The transfer of a civil or criminal case from one judicial district to another (See VENUE)

Chattel. An article of personal property, as distinguished from real property.

Civil Action. An action brought by a person or party to recover property, to force someone to honor a contract, or to protect private rights. In general, all types of actions other than criminal proceedings.

Civil Complaint. The original or initial pleading by which an action is commenced under statutes and rules of Civil Procedure. It is the pleading, which sets forth a claim for relief.

Civil Jurisdiction. The authority, capacity, power, or right of a court to hear non-criminal matters.

Civil Jurisdiction – Limited Cases. Superior Court limited cases have original trial jurisdiction in actions involving \$25,000 or less.

Civil Jurisdiction – Unlimited Cases. Superior Court unlimited cases have original trial jurisdiction in civil matters involving over \$25,000 and in all civil matters involving family law, probate, mental health, and property taxes.

Civil Process. Service of documents that either notify the parties involved that a civil case is in progress or try to force a judgment of the issues involved.

Contract. An agreement between two or more persons that creates, changes, or eliminates a legal relationship; an agreement between two or more persons which creates an obligation to do or not to do a particular thing.

Costs. An award of money, made to the successful party (and recoverable from the losing party), for expenses in prosecuting or defending an action or a distinct proceeding within an action.

Cross-Complaint. A defendant or cross-defendant may file a cross-complaint setting forth either or both of the following; (a) Any cause of action he or she has against any of the parties who filed the complaint against him. (b) Any cause of action he or she has against a person alleged to be liable thereon, whether or not such person is already a party to the

action, if the cause of action asserted in the cross-complaint, (1) arises out of the same transaction, occurrence, or series of transactions or occurrences as the cause brought against him or her or (2) asserts a claim, right, or interest in the property or controversy which is the subject of the cause brought against him or her. (Compare COUNTERCLAIM)

Damages. Compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to one's person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another.

Damages (Compensatory). Damages to compensate the injured party for the injury sustained, and nothing more; such as to simply make good or replace the loss caused by the wrong or injury. Compensatory damages consist of both general and special damages. General damages are the natural, necessary, and usual result of the wrongful act or occurrence in question. Special damages are those that are the natural, but not the necessary and inevitable result of the wrongful act (i.e., medical bills, automobile repair bills).

Damages (Nominal). Damages awarded for the vindication of a right where no real loss or injury can be proved.

Damages (Punitive/Exemplary). Damages on an increased scale, awarded to the plaintiff over and above compensatory damages, where the wrong done to plaintiff was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant. The damages are intended to comfort the plaintiff for mental anguish, shame, degradation, or other aggravations of the original wrong; or to punish the defendant for evil behavior or to make an example of the defendant.

Decedent. A deceased person.

Decree (Interlocutory). A provisional or preliminary decree, which is not final and does not determine the suit, but directs some further proceedings preparatory to the final decree.

Decree (Final). A decree that fully and finally disposes of the whole litigation, determining all questions raised by the case and leaving nothing that requires further judicial action.

Demurrer. A demurrer raises issues of law, not fact, regarding the form or content of the opposing party's pleading (complaint, answer or cross-complaint). Demurrers do not challenge the truthfulness of the complaint. For purposes of the demurrer, all facts alleged in the complaint are assumed to be true, however improbable.

Eminent Domain. The right of the government to take private property for public use and provide fair compensation to the owner.

Execute. To complete all the terms of a contract or will; to sign a document; to take the life of a convicted person under the authority of the state.

Garnishment. The withholding of wages to satisfy a civil judgment.

Guardian ad Litem. A court-appointed adult who represents a minor. (See AD LITEM)

Indemnity. An obligation to provide compensation for a loss, hurt, or damage.

Injunction. A court order prohibiting a person from doing or continuing to do a specific act or commanding someone to undo some wrong or injury. (Compare ENJOIN, RESTRAINING ORDER)

Interpleader. A procedure to determine which of the two or more persons who are bringing the same suit against another party is the rightful claimant.

Judgment. The final decision of the judge stating which party has prevailed and the terms of the decision. (Compare DISPOSITION, VERDICT)

Judgment (J.N.O.V.). The abbreviation for “notwithstanding the verdict”. A court ruling in favor of one party despite the fact that there has been a jury verdict for the other party. (Compare VERDICT)

Judgment (Summary). The court’s decision prior to a trial directing that the action has no disputed facts and that one party is entitled to judgment as a matter of law. (Compare VERDICT)

Keeper. An officer appointed by the court to negotiate custody of money or property legally seized in connection with a pending case.

Letter of Instruction. A form that states the property to be seized.

Levy. To assess; raise; execute; exact; tax; collect; gather; take up; seize.

Libel. Presentation of false and malicious written, printed, or published material that is defamatory and injures the reputation of an individual. (Compare SLANDER)

Lien. A claim that bars the sale or transfer of specific property until payment of a debt or obligation is made.

Limited Civil Case. A civil case where the amount in controversy is \$25,000 or less.

Lis Pendens. From the Latin: “A pending suit”; jurisdiction of a court over property until final disposition.

Mediation. A process in which a neutral third party assists disputing parties in reaching a mutually acceptable settlement. The neutral third party attempts to clarify the dispute for

the parties and provides suggestions for resolution. (Compare ARBITRATION, EARLY NEUTRAL EVALUATION)

Negligence. The failure of a person to use the degree of care a reasonable person would exercise in a given situation to protect the rights, person, and property of others.

Personal Injury. A civil case that includes actions for damages for physical injury to persons and actions for wrongful death.

Process. To serve a legal document that compels a defendant to answer a civil complaint.

Promissory Note. A written document stating that one person promises to pay money to another.

Quiet Title. An action in which the ownership of certain land is in dispute and submitted to the court for determination.

Respondent. The person against whom an appeal is made; the responding party in a dissolution, nullity, adoption, probate matter, or any petition.

Restitution. The act of restoring or reimbursing a person for injury, damage, or loss.

Restraining Order. A time-limited order that directs a person to stop doing something until a formal hearing is held. (See INJUNCTION)

Slander. Oral defamation of a person's character or reputation through false or malicious statements. (Compare LIBEL)

Tenant. A person who rents or leases property.

Tort. A private or civil wrong not involving a contract; failure to perform some duty imposed by law or custom, resulting in injury to another.

Tort-Feasor. A person or business guilty of a tort.

Trust. A legal instrument to hold title to property.

Trustee. A person who has custody of or control over funds or times for the benefit of another.

Trust Fund. Money, stocks, bonds, or securities held by or under the control of someone for the use and benefit of another.

Unlawful Detainer. The act of continuing to occupy real property when the right to it has been terminated.

Verdict. The final decision or findings of a jury. (See JUDGMENT N.O.V.; compare SUMMARY JUDGMENT)

Verdict (Directed). In a civil case, a verdict ordered by the court in favor of a particular party due to the preponderance of the evidence.

Verdict (General). A verdict given in a civil case in which the jury finds in favor of either the plaintiff or the defendant.

Verdict (Special). In a civil case, the decision and findings of the jury on specific factual issues.

Writ of Attachment. Orders that specified property be attached.

Ward of the Court. A minor who is under the care and control of the court rather than the parent(s).

Miscellaneous Civil/Small Claims Facts

- A civil action arises out of an obligation and/or injury.
- A civil action is commenced by filing a complaint with the court.
- A defendant must answer a summons in a civil case within 30 days after service has been completed.
- A demurrer may be taken when an answer is uncertain, an answer pleads a contract, or an answer fails to state sufficient facts.
- A judgment creditor may file a notice with the Department of Motor Vehicles requesting suspension of the judgment debtor's privilege to operate a motor vehicle when a judgment was the result of a motor vehicle accident on a California highway involving the judgment debtor, a judgment was for \$500 or more and has remained unsatisfied for more than 30 days after the judgment became final.
- A "judgment" is a final determination of the rights of the parties in an action or proceeding.
- A motion for a summary judgment may be made in any action or proceeding any time after 60 days have elapsed since the general appearance.
- A motion for judgment on the pleadings may be made by the plaintiff after the defendant has filed an answer and the time for demurrer has run; and by the defendant after the defendant has filed an answer to the complaint and the time for a demurrer has elapsed.

- A motion to disqualify, or affidavit of prejudice against any judge, commissioner, or referee must be made at least five days prior to the hearing or court action. However, if the judge, commissioner, or referee who will hear the matter is known, the motion must be made at least 10 days prior to hearing or court action.
- A process in which a neutral person aids communication between the parties to an action to assist them in reaching a mutually acceptable agreement is called mediation.
- A tenant is guilty of an unlawful detainer when he/she continues in possession of the property, without permission of the landlord, after default in payment of rent.
- A "Writ of Execution" is issued by the clerk upon application of the judgment creditor and is directed to any sheriff, marshal, constable or levying officer.
- After an appeal has been decided, the clerk of the reviewing court shall remit or send a certified copy of the judgment on appeal or order to the clerk of the trial court.
- An "Abstract of Judgment" is best described as a summary of the court ordered judgment issued by the clerk at the request of the judgment creditor.
- An action filed in a court which lacks jurisdiction shall be transferred to the court of proper jurisdiction by application of either party and on the court's own motion.
- An action upon any contract, obligation, or liability founded upon an instrument in writing must be started within four years.
- An affidavit taken before a judge or a court in another state that requires the genuineness of the signature of the judge, certified by the clerk, under the seal of the court is called exemplification.
- An appeal from a judgment in a small claims action is taken by filing a notice of appeal with the clerk not later than 30 days after the clerk has delivered or mailed the notice of entry of judgment to the parties.
- An appeal may be taken from a small claims judgment, an order changing place of venue, or an order granting or denying a motion for new trial.
- An application to reconsider an order by the court must be made to the court within 10 days after service upon the party of written notice of entry of the order.
- Any pleading may be amended once by the party without court costs at any time before the answer or demurrer is filed, or at any time after the demurrer is filed but before it is decided.
- At the time of transmittal of the papers and pleadings to another court, the clerk is required to mail notice to all parties who have appeared in the action.

- Certain acts of a secular nature that are to be performed by law on a specific weekend day or legal holiday may be performed on the next business day.
- Civil “pleadings” in a civil action are the formal allegations by the parties of their claims and defenses.
- Discovery in the form of interrogatories, written or oral examinations, or physical and mental exams is allowed in civil cases prior to a case going to trial.
- Each juror in a civil case is paid at the following rate: \$15.00 per day, plus \$0.34 per mile.
- Enforcement of a judgment is automatically stayed in a small claims action until the expiration of the time for appeal or until the appeal has been decided.
- Every pleading shall contain a caption setting forth the name of the court in which the action is brought and the title of the action. The pleadings allowed in civil actions are complaint, answer, demurrer and cross-complaint.
- Every written proceeding in a court in this state shall be in the English language, and judicial proceedings shall be conducted, preserved and published in the English language and no other.
- Except as otherwise expressly provided by law, the seal of the court need not be affixed to any proceeding therein, or to any document, except to a writ, a summons, and a warrant of arrest.
- If an action is filed in a court in which venue is not proper, and it is ordered transferred upon application to the proper court, transfer fees shall be paid.
- In a civil jury trial, each party shall be entitled to six peremptory challenges. If there are more than two parties, the court shall divide the parties into sides, each side being entitled to eight peremptory challenges.
- In a small claims court a person may sue for the recovery of money only where the amount claimed does not exceed \$5,000.
- Intervention to an action is made by a third person by the filing of a complaint, after leave of the court.
- Juries are of two kinds: Grand juries and trial juries.
- Jurisdiction of the court over the parties and the subject matter of an action continues throughout subsequent proceedings in the action.
- Limited civil cases and proceedings cannot exceed \$25,000 exclusive of interest.

- “Mediation” is an alternative process and simplified procedure for reducing the cost, time, and stress of dispute resolution.
- Minors and incompetent persons shall appear as parties to a civil action by a guardian or conservator or by guardian ad litem appointed by the court.
- Personal delivery of a summons and a complaint is deemed complete at the time of such delivery.
- Proof that a summons was served on a person within this state shall be made by affidavit of person making such service.
- Substituted delivery of a summons and complaint is deemed complete on the 10th day after mailing a copy of the summons and complaint to the person served.
- Terms related to cross-complaints include “complaint”, meaning complaint or cross-complaint; “plaintiff”, meaning a person who files a complaint or cross-complaint; and “related cause of action” that the plaintiff alleges in the complaint.
- The clerk must set a small claims case on calendar not more than 40 days nor less than 15 days for filing if the defendant lives within the county. If the defendant lives outside the county, the case must be set for not more than 70 days nor less than 30 days.
- The clerk must verify that proper service of the summons is shown, and that an affidavit of application for default judgment was mailed to parties prior to entry of a default judgment.
- The clerk shall mail “Notice of Entry of Judgment” on any judgment or ruling, whether or not it is appealable, upon order of the court in any action.
- The closure of a branch office of any city, county, state, or public office for the whole day is considered a legal holiday.
- The contents of a complaint or a cross-complaint shall contain a statement of the facts in ordinary language setting forth the cause of action and a demand for judgment for which the pleader claims he/she is owed or entitled.
- The court may, on motion, change the place of trial when the court designated in the complaint is not the proper court; there is reason to believe that an impartial trial cannot be had therein; or when the convenience of witnesses and the ends of justice would be promoted by the change.
- The court may, upon such terms as may be just, relieve a party from a judgment, order, or other proceeding taken against him through mistake or surprise.

- The “exceptions” to maintaining a judgment book by the clerk are if the original judgment is maintained in the court case file; the original judgment is maintained by microfilm; or judgment is entered into the court’s electronic data processing system.
- The grounds for disqualification of a judge to hear a court proceeding are: for any reason the judge believes his or her recusal would further the interest of justice; the judge has personal knowledge of disputed facts concerning the court action; or the judge has a financial interest in the subject matter.
- The judgment creditor may apply to the court for an order for examination of judgment debtor once every 120 days, unless good cause is shown to the court for a more frequent examination. Service of the order on the judgment debtor must be by personal service.
- The Judicial Council may promulgate rules in civil cases governing pretrial conferences and the time, manner and nature thereof. “Promulgate” means to create, define, and publish.
- The party in whose favor the judgment is given may at any time within 10 years after the entry thereof have a writ or order issued for the execution or enforcement of the judgment.
- The process by which a witness is required to produce records at a particular place and time is called a subpoena duces tecum.
- The process by which the attendance of a witness is required at a particular place and time is called a subpoena.
- The “Statement of Decision” is a written finding by the court explaining the factual and legal basis for its decision.
- The term “holiday” as used herein shall mean all day on Saturday and all judicial holidays pursuant to Government Code Sections 6700 and 6701.
- The time for service on a witness to appear at a particular place and time must be a reasonable time.
- There are two kinds of challenges given to individual jurors: Pre-emptory and For Cause.
- A guardian ad litem is appointed by the court, as follows: For a plaintiff, before summons is issued upon application; for a defendant, within 10 days after service of the summons; for an insane or incompetent person who is a party to the action, upon application of a relative.

- When a small claims defendant does not feel that money is owed to the plaintiff on the plaintiff's claim and that the plaintiff owes the defendant money, the defendant may file a counter-claim with the clerk.
- When a party makes a motion to the court for an order that was not included in the judgment, it is called an application.
- When computing time that any act provided by law is to be done, the first day and the last day are included; unless the last day is a holiday, which is excluded.
- When the original summons becomes lost after service has been made and before it is returned to the court, an affidavit of the person who made the service and facts showing service was made is accepted by the court as a valid proof of service.
- When there are two or more defendants in a small claims action and one or more of them resides outside the county in which the action is brought, the date for the appearance of all defendants shall not be more than 70 days from the date of the order to appear.
- When trial by court has been had, judgment must be entered by the clerk forthwith; when trial by jury has been had, judgment must be entered by the clerk within 24 hours.

Criminal

Infractions

An infraction is an offense that is punishable only by a fine. Jail time cannot be imposed. Most traffic moving violations are infractions, as are many local city and county ordinances. A person charged with an infraction may be represented by an attorney at their own expense, but is not entitled to a public defender or other court-appointed attorney. Defendants are entitled to a court trial only, not to a jury trial.

Misdemeanors

A misdemeanor is an offense punishable by a fine or jail time of up to one year in the County jail, or both. More serious traffic offenses such as driving on a suspended license or driving under the influence are misdemeanors. Many less-serious criminal offenses such as possession/under the influence of drugs, public intoxication, petty theft, assault & battery and domestic violence without serious bodily injury, disturbing the peace, resisting arrest, vandalism or malicious mischief, solicitation and prostitution, and possession of a firearm in a vehicle, are classified as misdemeanors. Misdemeanor defendants are entitled to be represented by an attorney, and the public defender or conflict attorney may be appointed for indigent defendants. Defendants are entitled to a jury trial but may waive this and submit to a court trial. If convicted or pleading guilty, defendants may be placed on formal or informal probation with various terms and conditions, such as attending treatment programs, Adult Offender or Community Service, and installment payments of fines and fees. Many defendants are required to return to court for review hearings to monitor their progress in treatment programs and other conditions of probation.

Felonies

A felony is an offense punishable by a term in state prison. The same rights that apply to misdemeanor defendants apply to felony defendants. More serious criminal offenses such as rape and other sex crimes, robbery, possession of drugs in larger quantities or for sale, assault, domestic violence or other acts of violence resulting in serious injury, child or elder abuse, grand theft, forgery, possession of stolen property, and possession/use of weapons, are classified as felonies. Many cases that are filed as felonies are reduced to misdemeanors as part of the “plea-bargaining” process, and are often referred to as “wobblers”. The County Probation Department conducts an investigation and submits a pre-sentence probation report and recommendation to the sentencing judge for all felony convictions. More serious felony offenses require mandatory state prison terms and prohibit probation; but probation may be granted and time served in the County jail in many other felony cases. After completion of their prison commitment, felons may be on parole under the supervision of the State Department of Corrections. Defendants sentenced to local time are supervised by the County Probation Department. Ex-felons may not possess firearms, and prior convictions may be used against them in future cases. The “three-strikes” provisions require increased prison time for defendants with certain serious prior felony convictions, even if the latest felony is not as serious.

Homicide/Special Circumstances

Homicide is the unlawful killing of a human being. Homicides are classified according to the manner of death. Murder is a killing with malice aforethought, either a deliberate intent to take a life, or circumstances showing “an abandoned and malignant heart.” First degree murder is a willful, deliberate and premeditated killing, or one committed in the perpetration of another felony such as arson, burglary, rape, robbery, kidnapping, or a “drive-by shooting”. All other kinds of murders are second degree. First degree murder is punishable by the death penalty, life without parole, or 25 years to life. If “special circumstances” exist the defendant must receive the death penalty or life without parole. These special circumstances include intentional murder for financial gain, poisoning, prior murder conviction, multiple murders, arson or use of explosive device, while escaping from custody, peace officer victim, or an atrocious or cruel killing manifesting exceptional depravity or torture. An aider or abettor not the actual killer may also receive the death penalty or life without parole. Second degree murder is punishable by 15 years to life or 25 years to life if the victim was a peace officer.

Manslaughter is an unlawful killing without malice. It is classified into three kinds:

Voluntary – a sudden quarrel or heat of passion.

Involuntary – during commission of an unlawful act not amounting to a felony or without due caution.

Vehicular – with or without gross negligence.

Voluntary manslaughter is punishable by three to 11 years in state prison; involuntary by two to four years; vehicular by two to 10 years in state prison, or one year in county jail in certain cases.

Justifiable Homicide

A killing committed by accident and misfortune when using ordinary caution without any unlawful intent, or in the heat of passion with sufficient provocation without use of a dangerous weapon, and not done in a cruel or unusual manner. Deadly force may be used to defend the home from forcible entry if there is a reasonable fear of imminent peril of death or great bodily harm to the occupants.

Juvenile Court

The Superior Court Juvenile Court Division has jurisdiction over minors (under age 18) alleged to have committed criminal acts, including infractions, misdemeanors, and felonies. Although criminal acts committed by juveniles are usually the same ones that adults can be charged with, the laws and procedures governing juvenile cases are entirely different. Minors are not arrested, they are detained. Almost all juvenile court proceedings are confidential, which means that the minor's name and other information about the case cannot be disclosed, and court hearings are closed to the public. There are very short time deadlines in which juvenile cases must be heard. There is no right to bail, but minors may be released from custody under supervision or electronic monitoring. Minors have the right to a trial before a judge, but are not entitled to a jury trial. If the criminal allegations are adjudged to be true, the minor is declared a ward of the court, and may be committed to the California Youth Authority or to county facilities and programs.

Criminal Procedure

Arrest

To apprehend and deprive a person of their liberty by legal authority by taking them into custody by a peace officer or private citizen with or without a warrant for a felony or misdemeanor offense. If without a warrant, a misdemeanor must have been committed in the presence of the arresting officer/citizen. A felony arrest without a warrant requires reasonable cause to believe a felony has been committed, even if not in actual presence of the arresting person. An arrest gives rise to an incidental right to search the person and adjacent premises or vehicle. Arrestees have no right to resist arrest, even if the arrest is later determined to be unlawful. Their remedies for unlawful arrest include suppression of evidence and civil lawsuit for damages. Persons arrested may be taken into custody, booked, fingerprinted and photographed, and given breath/blood/urine tests for possible intoxication, even involuntarily. Arrested persons may be cited and released in the field upon signing a written promise to appear in court. Persons booked into jail may be cited and released, or released under a federal court order due to jail overcrowding, or may post bail at the jail according to a bail schedule.

Warrant

A court may issue three types of warrants:

- (1) **Arrest** - requested by law enforcement, even before formal charges are filed, based upon a sufficient showing that the person has committed an offense. Felony arrests may occur at any time of day or night; misdemeanors generally not between 10 PM and 6 AM unless the arrest warrant authorizes otherwise or the arrest is made in a public place.
- (2) **Bench** – issued by the court for a defendant who fails to appear in court after being released on his or her own recognizance (O.R) or on bail.
- (3) **Search** – issued by a judge upon request by law enforcement upon a showing of probable cause that evidence of a crime will be found. The probable cause must be based on timely facts, including hearsay and reliable informant information, and the totality of circumstances. Unintentional good faith mistakes will not invalidate a search warrant.

Extradition

The delivery of a person charged with a felony from one jurisdiction to another (state to state or foreign country). The governor of the requesting state may request the governor of the state where the defendant has been arrested to deliver the person for transportation to California. That governor must comply unless a court orders otherwise. A defendant who has committed crimes in both states may be extradited to the first state and then returned to the state where finally arrested. Defendants may challenge extradition but the grounds for doing so are very limited. The defendant's innocence or guilt is not an issue. Most defendants waive extradition and are returned without court hearing. Advanced waiver of extradition may be required as a condition of O.R. release or bail, or as a condition of parole or probation.

Venue

The court jurisdiction where the offense will be tried is generally the county where the offense was allegedly committed, even if only part of the offense was committed there. This may be where the offense commenced or was consummated, or within close proximity to a county line. If committed on a common carrier (bus, plane, train, vessel) venue may be in any county the carrier passed through, even if it is unclear in which county the offense actually occurred.

Venue for certain crimes may be in one of several counties:

- (1) Kidnapping – where the victim was taken from or to or any in between.
- (2) Homicide – where the injury was inflicted, where the victim died, or where the body was found.
- (3) Burglary/Robbery/Theft – where the property was taken or received.
- (4) Non-support of a child – where the child resides or where the defendant was apprehended.

- (5) Prison escape – statewide.
- (6) Conspiracy/Accessory – where an overt act was committed.

Change of Venue

May be requested by a defendant who believes a fair and impartial trial is impossible where the offense was committed. Rarely granted, it requires a strong showing of reasonable likelihood that an impartial jury cannot be impaneled, based on prejudicial pre-trial publicity, the nature and gravity of the offense, the size of the community, the status of the defendant or the prominence of the victim. Although usually only sought in capital cases, it can be requested in any type of case, and is within the discretion of the trial judge to grant or deny, subject to appeal. Instead of moving the trial location, some courts bring in jurors from other counties, sequester juries, and take other measures to ensure an impartial jury.

Arraignment

The defendant's first court appearance, usually at the court where charges were filed or the nearest court if arrested elsewhere. Defendants are informed of the charges and any prior convictions alleged and advised of their rights. An attorney is usually appointed to represent them at arraignment and further court proceedings are set at this hearing.

Bail

Cash, real property or bond posted to ensure a defendant's appearance or for concerns of public safety when acts of violence or threats to others are alleged. The bail amount is determined by the bail schedule adopted by the court, or set by the judge when the defendant appears for arraignment. All defendants, except in capital cases, have the right to be considered for bail. Defendants in capital cases may be released on bail, but do not have the right to bail that non-capital defendants have. If the defendant fails to appear, the bail is forfeited; once the case is concluded, the bail is exonerated.

Complaint

A formal document filed by the District Attorney alleging that a specified person has committed a crime.

Information (Felonies)

A formal document filed by the D.A. charging the defendant with a crime, usually filed after a preliminary hearing if the defendant is held to answer.

Pleas

- (1) Guilty - A guilty plea is an admission of every element of the offense charged, and is equivalent to a guilty verdict returned by a judge or jury.
- (2) Not Guilty
- (3) Not Guilty by Reason of Insanity
- (4) Nolo Contendere (No Contest) - A no contest plea has the same force and effect as a guilty plea, but cannot be used as an admission in any subsequent civil suit.

Discovery

Defendants generally have the right to all evidence whether incriminating or exculpatory, unless a compelling government interest that certain evidence be kept confidential for purposes of effective law enforcement exists. Proposition 115 gives the prosecution mutual discovery rights from the defense, but there are many issues pertaining to the defendant's right against self-incrimination that must also be considered.

Jury Motion (Misdemeanors)

A pre-trial conference where "plea bargaining" resolves most cases.

Preliminary Examination (Felonies)

A preliminary examination must be held within 10 days of arraignment, but time is often waived if the defendant is not in custody. Plea bargaining resolves many cases at this stage, but if no settlement is reached a hearing is conducted to determine if there is sufficient or probable cause that the defendant committed a felony. If the court finds probable cause, the defendant is held to answer and the case set for trial. A defendant may waive a preliminary examination, with the consent of the D.A., and proceed directly to trial.

Peremptory Challenge of Judge (C.C.P. 170.6)

The prosecution and the defendant have the right to file one peremptory challenge of the judge assigned to the case, which must be granted. The case is then reassigned to another judge. Any further challenges must be for good cause. Parties in civil cases also have the right to one peremptory challenge.

Motions And Writs**Motion to Suppress Evidence (P.C. 1538.5)**

A Motion to Suppress Evidence filed by the defendant for return of property or to suppress as evidence any tangible or intangible thing obtained as a result of an allegedly illegal/unconstitutional search or seizure. May be made before trial or at the trial. The grounds for making a suppression motion are that the search or seizure without a warrant was unreasonable. If the search/seizure was made pursuant to a warrant, the grounds are because the warrant was insufficient on its face; the property or evidence obtained was not that described in the warrant; there was not probable cause for issuance of the warrant; the manner of execution of the warrant was unconstitutional; or there was some other violation of constitutional standards. If motion is granted, evidence is excluded and cannot be used against defendant at trial.

Motion to Set Aside Information (P.C. 995)

A motion may be filed by the defendant after preliminary examination based on alleged errors at the preliminary examination such as erroneous rulings on evidence, lack of reasonable or probable cause for holding the defendant to answer, or expiration of the statute of limitations.

Incompetency of Defendant (P.C. 1368)

A person cannot be tried or punished if that person is mentally incompetent as a result of mental disorder or developmental disability. Upon granting of the motion, an expert may be appointed to determine if the defendant is unable to understand the nature of the criminal proceedings or assist counsel in a rational manner in the conduct of the defense. If found incompetent, criminal proceedings are suspended and the defendant is committed to a state hospital for treatment. If it is subsequently determined that the defendant is competent, the case is resumed. A 1368 motion may be brought before or during trial.

Writ of Habeas Corpus

Latin for "You have the body." Used to challenge the legality of imprisoning a person, not whether or not the person is guilty or innocent. It may be brought before or after conviction, but is usually filed after conviction based on alleged errors before or during trial. The usual grounds allege errors during the trial such as misuse or admission/exclusion of evidence, denial of right to effective counsel, denial of fair or speedy trial, improper admission of confession, and sentencing errors. Other subjects for habeas corpus writs range from admission to bail, extradition, mental incompetence, due process, statute of limitations, double jeopardy, denial of probation, to violations of rights of prisoners.

Writ of Mandate or Prohibition

Brought to compel an act to be done or prohibit an act from being done. Typical subjects for these writs include discovery rights, suppression of evidence, presumption of innocence and burden of proof, and denial of probation.

Statute of Limitations

The period of time in which criminal charges must be filed. For misdemeanors, the time limit is one year; for felonies it is three years. There is no time limit for filing charges in murder cases.

Trial

By court (judge) or jury. Defendants have the right to a speedy trial. Under California law, trial must generally be commenced within 60 days after filing of the information, unless time is waived. Incarcerated prisoners have the right to demand trial on other pending charges within 180 days. Failure to meet time deadlines result in dismissal of the case. In misdemeanor cases the dismissal is final; for felonies the prosecution can re-file charges one time only.

Defendants have the right to be dressed in civilian clothes in the presence of the jury; and to be unshackled unless there are overriding security concerns, in which case the restraints must be concealed from the jury. In extreme cases defendants may be removed from the courtroom.

Co-defendants have the right to request a separate trial, which the judge has wide discretion to grant or deny.

Trials and other court proceedings are a public matter, and members of the public and the press have the right to attend court sessions, with certain exceptions in juvenile and other cases. The court may take steps to control prejudicial publicity and issue “gag” orders. Cameras may be prohibited.

Jury trials require a panel of 12 persons, who must reach a unanimous verdict. Juries must be fair and impartial, and must be representative of the community. Racial or group discrimination is prohibited. The defendant may challenge the methods of summoning jurors. Generally, jurors are drawn from voter registration and DMV records. Prospective jurors may be questioned by the attorneys and the court during voir dire, and jurors may be excused peremptorily or for cause.

Defendants have the right to the presumption of innocence, and the prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Reasonable doubt is not mere possible doubt, but means that the jurors must conclude that, after considering all the evidence, they cannot feel an abiding conviction, to a moral certainty, of the truth of the charges. Jury instructions are given by the court at the conclusion of the evidence to guide the jury in its deliberations.

Defendants have the right against self-incrimination, and cannot be compelled to testify. The prosecution may not use a defendant’s decision not to testify against him or her. Defendants have the right to confront and cross-examine witnesses and evidence used against them. Although defendants have the general right to see the witnesses testify in open court, there are exceptions and steps may be taken by the court to protect witnesses.

Defendants have the right to counsel at all stages of the proceedings, from interrogation through trial and appeal, and may challenge the denial of counsel while being interrogated by the police – their “Miranda” rights – at trial or in pre-trial motions, or on appeal. Defendants represented by court-appointed counsel have the right to request another attorney – a “Marsden” motion. Defendants may plead not guilty by reason of insanity, in which case a separate trial on that issue may be required.

Defendants have the right to appeal a conviction or sentence, by filing a notice of appeal within 30 days. Appeals are heard by the District Court of Appeals, and further appeals to the Supreme Court may be sought. Death penalty cases are automatically appealed to the Supreme Court. If constitutional issues are raised, further proceedings in the federal courts may be brought, all the way to the U.S. Supreme Court.

Glossary of Terms – Criminal

Accomplice. A person who knowingly and willingly assists the principal offender in the commission of a crime.

Accused. A person or persons against whom a criminal proceeding is initiated. (See DEFENDANT)

Acquittal. The legal finding by a judge or jury that the accused is not guilty.

Admission. The voluntary acknowledgment that certain facts do exist or are true, which when combined with proof of other facts, tend to prove the defendant's guilt. (Compare CONFESSION)

Arraignment. The first hearing after an arrest, in which the accused is given a copy of the complaint, is informed of the charges filed, is advised of his or her constitutional rights, and enters a plea to the charges.

Arrest. To apprehend and deprive a person of liberty by legal authority. Taking custody of a person, under real or assumed authority, for purposes of holding or detaining the person to answer a criminal charge.

Bail. A sum of money or other form of security given to the court in exchange for the release of the accused from custody, and to guarantee that the accused will appear in court.

Bail Bond. The document executed to secure the release of a person from custody.

Bail Exoneration. The refund of a bail deposit to the depositor or the release of a surety company from liability.

Bail Forfeiture. The retention by a court of a bail deposit for failure of the accused to appear in court at an appointed time.

Bail Schedule. A listing of the recommended amount of bail for specific charges. In criminal cases, bail generally refers to the amount set at the discretion of the court to secure release from custody. Each court establishes a countywide criminal bail schedule. Bail for traffic violations is standardized statewide.

Bind Over. To make a finding at a preliminary examination that sufficient evidence exists to require a trial in superior court on the charges made against the defendant. (See HELD TO ANSWER)

Blood Test. A chemical analysis of a blood sample from a person to determine the percentage of a foreign substance in the bloodstream.

Book(ing). A process in which police fingerprint, photograph, and collect personal data on a suspect at the time of arrest.

Breath Test. A chemical analysis of a person's breath to determine the percentage of alcoholic fumes.

Capital Case. A criminal case in which death may be the punishment.

Change of Venue. The transfer of a civil or criminal case from one county to another (See VENUE)

Charge. In criminal law, the formal statement of each accusation against a defendant. (See COUNT)

Citation. An official order from the court notifying a defendant/respondent of the charges being made, and commanding the defendant to appear in court and/or post bail.

Cited. A defendant not in custody who has signed a citation agreeing to appear in court on a specified day.

Citing Authority or Agency. A law enforcement agency, such as city police, sheriff, or the California Highway Patrol, that has the power to arrest persons for violation of the law.

Commitment Order. A court order directing a person be kept in custody, usually in a penal or mental institution.

Competence Order. An order from a superior court finding a defendant mentally competent to stand trial and directing the court to proceed with criminal case processing.

Criminal Complaint. The formal charge filed with the court alleging that a specified person has committed a crime. (See INFORMATION)

Concurrent Sentences. Sentences served at the same time: e.g., concurrent sentences of 10 years and 5 years equal a total of 10 years served. (Compare CONSECUTIVE SENTENCES)

Confession. A statement by a person, either oral or written, admitting that a certain offense has been committed. (Compare ADMISSION)

Consecutive Sentences. Two or more sentences served continuously, one right after the other. e.g., consecutive sentences of 10 years and 5 years equal a total of 15 years served. (Compare CONCURRENT SENTENCES)

Conviction. The determination of guilt based on a plea, a jury verdict, or a finding of a judicial officer.

Court Liaison Officer. A person representing law enforcement who brings case filings and documents to or from the court.

Crime. An action that violates the law. (See OFFENSE, PUBLIC OFFENSE)

Criminal. One who has been convicted of a felony or a misdemeanor.

Criminal Case. Cases in which a defendant is charged with a crime and may be punished by jail, prison and/or fine.

Custody. To put a person under the restraint and physical control of the court to ensure appearance in court or to imprison an accused after a criminal conviction.

Custody List. A list of the names of people in custody in various detention facilities who have to be transported by the sheriff for a court appearance on a specific day; may also be called “transportation list.”

Defense Attorney. In criminal proceedings, refers to the attorney representing the accused.

Detention. Temporary custody of an adult or a juvenile while the court forms a final decision.

Deuce. A colloquial term for a case involving driving under the influence of an intoxicating drug or liquor.

Diversion. An alternative sentence (rather than jail) in which a defendant is supervised by a probation officer while attending a rehabilitation program so that upon successful completion the charges are dismissed without adjudication. (Compare ELECTRONIC SURVEILLANCE, HOME DETENTION)

Electronic Surveillance. Use of an electronic device to monitor the whereabouts and restrict the activities of a sentenced party in lieu of having the party serve time in jail. (See HOME DETENTION)

Execute. To complete all of the terms of a contract or will; to sign a document; to kill a person by the authority of the state.

Exonerate. To clear from blame or to relieve of responsibility.

Exonerate Bail. Money or property returned to the defendant or the bondsman by the court.

Extradition. The formal process of delivering a person apprehended in one state to the authorities of the state in which that person has been accused or convicted of a crime.

Felony. A major criminal offense punishable by death or by imprisonment for more than one year in a state prison. (Compare INFRACTION, MISDEMEANOR)

Fugitive. A person who flees or tries to flee from arrest, prosecution, or imprisonment.

Guilty. Found beyond a reasonable doubt to have committed a crime.

Guilty Plea. A formal admission to an offense charged in a criminal complaint, information, or indictment.

Habeas Corpus. From the Latin: “You have the body”; the name of a writ used to bring a person before a court or a judge so that the court or judge may determine whether that person is being unlawfully denied his or her freedom.

Held to Answer. To make a finding at a preliminary hearing that sufficient evidence exists to require a trial in Superior Court on the charges made against the defendant. (See BIND OVER)

Holding Cell. A cell within a courthouse where prisoners are held in custody before and after their court appearance.

Home Detention. Use of an electronic device to monitor the whereabouts and restrict the activities of a sentenced party in lieu of having the party serve time in jail. (See ELECTRONIC SURVEILLANCE)

Honor Camp. A rehabilitation program, run under the direction of the Probation Department, that accepts people who are at low risk of escaping or who are nonhabitual offenders.

Immunity. Protection from penalty (generally from criminal prosecution) in exchange for testimony that might not otherwise be forthcoming. (See PRIVILEGE)

Impound. To seize and hold property or objects in the custody of the law.

Incarcerate. To confine to a jail.

Incriminate. To hold another or oneself responsible for criminal misconduct.

Indictment. A formal accusation by a grand jury charging a person with a crime. (See TRUE BILL; Compare INFORMATION)

Information. A written accusation presented in the Superior Court by a prosecuting officer charging a person with a crime. (See COMPLAINT; Compare INDICTMENT)

Infraction. A violation of a statute for which the only sentence authorized is a fine, such as in a minor traffic violation. (Compare FELONY, MISDEMEANOR)

Innocent. Found to be not guilty of criminal charges; acquitted.

Inquest. A legal inquiry, held before a court of law and other officers legally empowered to hold inquiries, usually to determine the cause and circumstances of a death.

Jeopardy. The danger of conviction and punishment faced by a defendant when an indictment/information is filed and a jury is impaneled in a court of jurisdiction.

Magistrate. A judicial officer having the power to issue arrest warrants. (Compare COMMISSIONER, JUDGE, REFEREE)

Miranda Warning. Refers to a United States Supreme Court decision requiring that at the time of arrest and before questioning a person be advised of certain rights against self-incrimination.

Misdemeanor. A crime, other than a felony or an infraction, punishable by payment of a fine and/or by imprisonment not to exceed one year in the county jail. (Compare FELONY, INFRACTION)

Nolo Contendere. From the Latin: "I do not wish to contend"; a statement of implied guilt that holds true only for a criminal action and cannot be used as an admission of guilt in a civil suit for the same offense.

Offense. An act that violates the law. (See CRIME, PUBLIC OFFENSE)

Order Setting Fee. An order that directs a defendant to reimburse the county for a court-appointed attorney.

Own Recognizance. An individual is released from custody upon a promise to answer to a criminal charge and who is not required to post bail.

Pardon. To relieve a person from any further punishment imposed by a previous conviction.

Parole. A conditional release from imprisonment that entitles the person receiving it to serve the remainder of the sentence outside of the prison as long as all conditions of release are met.

Penalty. Punishment for violating the law.

Penalty Assessment. A sum of money added to a fine to offset the costs of some mandated public programs.

Plea. A formal statement of a defendant in response to a criminal accusation.

Plea Bargain. Negotiation between the prosecutor and the accused to exchange a guilty plea for conviction of a specified charge or sentence, subject approval by the court.

Preliminary Examination/Hearing. A proceeding before a judicial officer in which evidence is presented so that the court can determine whether there is sufficient cause to hold the accused for trial on a felony charge.

Prior. A term generally used to refer to a previous conviction.

Privilege. An advantage not enjoyed by all; a special exemption against prosecution or other lawsuits. (See IMMUNITY)

Probable Cause. A reasonable basis for assuming that a charge or fact is well founded.

Probation. A procedure by which a defendant found guilty of a crime is released without incarceration in state prison, subject to conditions imposed by the court which may include local jail time and/or fine and treatment programs.

Probation – Conditional. Probation without formal supervision.

Probation – Formal. Supervision of a defendant by a probation officer.

Probation Report. A report prepared by the Probation Department for use by the judge when sentencing a defendant; generally describing the defendant's background; financial, job, and family status; community ties; criminal history; and any other pertinent information.

Prosecuting Attorney. A public officer whose duty is the prosecution of criminal proceedings on behalf of the citizenry; usually referred to as "district attorney."

Public Defender. Attorney employed by the government, primarily to represent indigent defendants.

Public Offense. A crime. (See CRIME)

Rap Sheet. A colloquial term for a list of a person's criminal history.

Referee. An attorney appointed by the court to hear and make decisions on certain limited legal matters: e.g., juvenile or traffic.

Reinstated Bail. Bail previously forfeited, exonerated, or reduced that is then reestablished in its original amount.

Remand. To send back, as in a judge returning the accused in a criminal case to custody or as in an appellate court returning a case to the court in which it originated.

Report and Sentence. The proceeding following conviction in a criminal case, at which the judge imposes a sentence.

Restitution. The act of restoring or reimbursing due to an injury, damage, or loss.

Revocation. The act of voiding or canceling something, usually probation or a driver's license.

Self-Surrender. Voluntary surrender of a party to the police or to the court.

Sentence. The formal pronouncement by a court stating the punishment to be imposed on a person convicted of a criminal offense.

Time Waiver. To relinquish the right to a specified amount of time in which a certain phase of the legal process would normally take place.

True Bill. The endorsement made by a grand jury when it finds sufficient evidence to warrant a criminal charge. (See INDICTMENT)

Urine Test. Chemical analysis of a urine specimen to determine the content of alcohol or drugs.

Waive. To give up a legal right voluntarily, intentionally, and with full knowledge of the consequences.

Waiver of Rights Form. A form signed by the defendant and the judge recording which legal rights have been waived by the defendant as part of a guilty/no contest plea.

Warrant. A written order issued and signed by a judicial officer directing a peace officer to take specific action.

Warrant – Arrest. Commands a peace officer to arrest and bring before the court a person accused of an offense.

Warrant – Bench. A written order issued by the court from the judge or bench commanding a person's arrest for failure to appear in court, for contempt of court, or after indictment by a grand jury.

Warrant – Recall. A procedure for removing from Department of Justice and city, county and state police computers information concerning canceled warrants in order to avoid mistaken arrests.

Warrant - Search. An order issued by a judge, based on a finding of probable cause, directing law enforcement officers to conduct a search of specific premises or persons for property that constitutes evidence of a crime, and to bring it before the court.

Writ. A written order or directive issued by a court commanding that certain action be taken.

Writ of Habeas Corpus. Orders the release of someone who has been unlawfully imprisoned.

Writ of Mandamus. Orders the performance of any act designated by law to be part of a person's duty or status.

Writ of Prohibition. An order that further proceedings or other official acts be stopped.

Miscellaneous Criminal Facts

- A copy of a probation report must be filed with the court at least five (5) days prior to the sentencing hearing or upon the request of the defendant or prosecuting attorney it must be filed at least nine (9) days prior to the hearing.
- A description of the property is not an essential element on a search warrant.
- A docket must be kept by the judge or clerk of the court having jurisdiction over criminal actions or proceedings, in which must be entered name of each criminal defendant and under all orders and proceedings in such action or proceeding.
- A fee of \$35 shall be charged, as determined by the Board of Supervisors, for the processing of installment payments on fines.
- A felony is a crime that is punishable by death or by imprisonment in the state prison.
- A hearing under Penal Code Section 1368 means there is a question as to the mental competency of the defendant.
- A magistrate is an officer having power to issue a warrant for the arrest of a person charged with a public offense.
- A motion under Penal Code Section 1538.5 is a motion to suppress evidence.
- A PC 977 waiver is a waiver of the defendant's personal presence.
- A person charged with an infraction is not entitled to a trial by jury.
- A probation report is available to the public for 60 days after judgment is pronounced or probation is granted, whichever is earlier.
- A search warrant shall be served within 10 days from issuance.

- A telegraphic copy of a warrant or an abstract of a warrant may be sent by telegraph, teletype, or any other electronic devices to one or more peace officers; who shall proceed in the same manner as if they have the original warrant issued by a magistrate.
- A warrant of arrest issued under Section 813 starts out with: "The people of the State of California to any peace officer of said state . . ."
- A warrant of arrest shall be directed to any peace officer in the state.
- After a not guilty plea the defendant is entitled to at least five (5) days to prepare for trial.
- After the verdict the judge may request a probation report and extend the time for sentencing for 20 judicial days.
- All fines collected by a probation officer shall be placed in the general fund of the county.
- Alternate jurors may be called in a criminal case when the trial is likely to be protracted.
- An appeal may be taken by the defendant from an order affecting his/her substantial rights.
- An appeal may be taken by the defendant from a judgment or order in a criminal case from a final judgment of conviction or any order made after judgment affecting his or her substantial rights.
- An appellant may abandon an appeal by filing a written abandonment thereof at any time.
- An arrest for the commission of a felony may be made on any day and at any time of the day or night. An arrest for the commission of a misdemeanor or an infraction cannot be made between the hours of 10:00 p.m. of any day and 6:00 a.m. of the succeeding day unless the arrest is made in a public place, the arrest is made when the person is in custody pursuant to another lawful arrest, or the arrest is made pursuant to a warrant which, for good cause shown, directs that it may be served at any time of the day or night.
- An indictment for an offense punishable by imprisonment in the state prison must be returned, or an information or complaint filed, within three (3) years after its commission.
- Any person who alters a certified copy of an official record is guilty of a misdemeanor.

- At the arraignment the defendant must be allowed a reasonable time to answer. That time, if he/she requires it, shall be not less than one (1) day for an offense originally triable in the superior court and not more than seven (7) days for an offense originally triable in an inferior court.
- Every person who is found guilty of maliciously injuring or destroying any real or personal property of another, and the damage or destruction is less than \$1,000, is punishable by imprisonment up to six (6) months and up to a \$1,000 fine.
- Every person who procures or offers any false or forged instrument to be filed, registered, or recorded in any public office is guilty of a felony.
- If an action is filed in a court having jurisdiction that is not necessarily the proper court, the court will order the case be tried unless the defendant makes a motion to transfer.
- If an action or proceeding against a defendant who has been admitted to bail is dismissed, the bail shall not be exonerated until a period of 15 days has elapsed since the entry of the order of dismissal.
- If the public offense charged is a felony and the defendant is in custody, he/she shall have the right to a preliminary examination within 10 court days after arraignment.
- If, without sufficient cause, the defendant fails to appear for any occasion when his/her presence in court is required, the bail must be forfeited and, if the amount exceeds \$400, the clerk of the court shall mail notice of the forfeiture to the surety on the bond or depositor within 30 days.
- In a criminal action, the police may not issue a subpoena.
- In a criminal jury trial, all requests for jury instructions on points of law must be made to the court.
- In all cases the defendant must be taken before a magistrate without unnecessary delay, usually within 48 hours after his/her arrest.
- In criminal actions where two or more defendants are being tried jointly, the state and the defendant shall each be entitled to five (5) additional peremptory challenges which may be exercised separately.
- No person is obligated to attend as a witness out of the county in which they reside, unless the magistrate endorses on the subpoena an order for the attendance of the witness.
- Setting felony preliminary examinations must allow not less than two (2) days for the people and defense to prepare.

- In criminal matters the defendant has the right to subpoena without charge as many witnesses in the state as he/she requires. Upon application by the defendant, the court must issue blank subpoenas.
- The defendant in a felony case must be personally present at the time of trial.
- The determination of probable cause shall be made immediately unless the court grants a continuance for good cause not to exceed three (3) court days.
- The documents and records of the court relating to a search warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance.
- The cases on calendar must be disposed of in the following manner, unless for good cause the court shall direct an action to be heard out of order: Felony in-custody defendants, misdemeanors, bailouts, misdemeanor in-custody defendants, and felony bailouts.
- The judge or magistrate may, either on the court's own motion or upon application of the prosecuting attorney and in furtherance of justice, order an action to be dismissed.
- The length of service for a grand juror is one (1) year.
- The number of prior convictions is not a criterion for releasing a defendant on bail pending an appeal.
- The parties to a crime are classified as principals or accessories.
- The period during which further criminal proceedings against the defendant may be diverted shall be for no less than six (6) months nor longer than two (2) years.
- The process for the delivery and return of a person who has been charged with a crime in this state but is imprisoned in another state is referred to as extradition.
- The required number of persons comprising a grand jury in a county having a population exceeding 4 million is 23.
- There are six kinds of pleas to an indictment or an information to the complaint charging an offense: Guilty; Not Guilty; Nolo Contendere; Former judgment or conviction or acquittal of the offense charged; Once in jeopardy; Not guilty by reason of insanity.
- There is no statute of limitations for prosecuting embezzlement of public funds.
- Trial of an infraction shall be by court unless charged with a public offense for which there is a right to a jury trial and a jury trial is not waived.

- Unless good cause to the contrary is shown, the court must order the action to be dismissed when a defendant is not brought to trial within 30 days after he/she is arraigned and if he/she is in custody at the time of arraignment.
- Under the provisions of the Penal Code, when bail exceeds \$400 and is declared forfeited, application to set aside such forfeiture must be made within 180 days.
- When a person is arrested and released and no complaint is filed, the person shall be issued a certificate of detention by the arresting agency.
- When a person signs a written promise to appear and has not posted bail, the magistrate may issue and have delivered for execution a warrant for his/her arrest within 20 days after the failure to appear.

Family Law

Marriage

Before entering a marriage, the parties must first obtain a marriage license from the County Clerk.

A Marriage may be dissolved by one of the following:

- (a) The death of one of the parties;
- (b) A judgment of dissolution of marriage; or
- (c) A judgment of nullity of marriage.

Petitions for Dissolution, Legal Separation or Nullity

To file for Dissolution [also known as divorce], the party must be a resident of the State of California for at least six months and of the county for at least three months. If filing for Legal Separation, there is no residency requirement, but a Legal Separation does not formally terminate the marriage. In California the minimum time a party must wait for a divorce to become final is six months after the date the petition has been served. There is no provision in the law that allows for the six-month time period to be shortened.

Dissolution divides the assets and debts of a couple, determines custody and visitation rights regarding minor children, and returns the couple to the status of unmarried persons. Legal separation divides the assets and debts of a couple, determines custody and visitation rights regarding children, but leaves the couple legally married. A nullity restores a couple to the status of not having been married. A nullity requires a finding of fraud, prior existing marriage, unsound mind, force, physical incapacity, or petitioner's age at the time of marriage. It is not based on the length of a marriage.

Summary Dissolution (Uncontested Divorce)

An uncontested divorce can be obtained if both parties agree to the divorce and all of the following conditions apply: The parties have been married for five years or less; no children were born to the couple before or during the marriage; the wife is not currently pregnant; and there are no adopted children under the age of 18. Neither spouse can own any part of any land or buildings, and all community property must not be worth more than \$25,000. Neither party can have separate property worth more than \$25,000, and community property debts must be less than \$5,000.

Children and Divorce or Legal Separation

If there are children involved in a Divorce or Legal Separation, issues of custody and visitation must be resolved. Child support is always an issue when there are minor children.

A Declaration under the Uniform Child Custody Jurisdiction Act (UCCJA) statement must be filed and served. This document is helpful to the judge because it shows the pattern of residences of the children. It also lets the court know of any other court proceedings concerning the child. A Financial Statement or an Income and Expense Declaration must also be filed and served. These forms inform the court of the financial status of the parties and are mandatory for child support issues. These documents may be served on the other party with the petition and summons.

Separate and Community Property Debts

Community property includes all property acquired through either spouse's time, labor and skills, from the date of marriage through and including the date of separation. The date of separation is generally the date the filing party knew the marriage was over and there was no hope of saving it. This may be the date the party moved out or the date of filing for divorce. Community property is usually everything that married couples own together, such as real property, money earned, a car, house, security deposit, a 401(k) account, a pension, or home furnishings.

Community debts are all those debts that a husband and wife owe together. In most cases, these include anything still owed on debts taken on during the time the parties lived together as husband and wife. For instance, community debt can be a credit card debt, an outstanding tax debt, a mortgage debt, or a car debt.

California law requires that spouses divide community property and community debts equally. To equalize the division of assets and debts, the court may award one spouse more assets because they are also given more debts to pay. The parties can agree among themselves to divide assets and debts unequally.

Separate property is all property owned before marriage or acquired during marriage by one spouse through gift, bequest, devise or descent. Separate debts are debts a party had before marriage. California law requires that separate property assets or debts remain with the spouse having the separate property assets or debts.

When filing for divorce or separation, there must be a complete disclosure of all assets, debts, income, and expenses to the other party.

Retirement or Pensions

Pensions or retirement benefits are a form of employment compensation and are considered to be earnings. If the benefits were earned while married and employed, they are considered community property, regardless of when the benefits vest or are received. If the retirement or pension benefits were earned through employment while single, the retirement or pension is separate property even if it is received while the parties are married.

Defaults and Default Judgments

If the respondent does not file a Response to the petition for divorce within 30 days of service, the petitioner can file for a Default and Judgment. If the respondent does file a Response, then the petitioner cannot obtain a default. The petitioner must either enter into a written agreement with the respondent to end the marriage, or go to court and have the judge order the terms of the divorce. In any event, the divorce will not be final until the judge has signed the judgment papers, and at least six months and one day have passed since the date that the other spouse was served with the original petition.

Serving the Papers

Once a petition for divorce has been filed, an adult who is not a party to the case or a process server must serve a copy of the Petition and Summons on the other spouse. The person who serves the forms must complete and sign a Proof of Service form. A Proof of Service and Summons must be filed with the Clerk's Office - Family Law Department. Once the forms have been served, there is a 30-day waiting period to allow the other party time to file a Response with the court.

Child Custody and Support

After a petition for dissolution, legal separation, nullity or paternity has been filed with the court, a petition seeking orders to establish child custody, visitation or support may also be sought. In child custody and visitation cases, the parties will be required to participate in mediation through Family Court Services, an agency of the court.

There are two types of custody: legal custody and physical custody. The parent who has decision-making power over the child's health, education and welfare has legal custody. The court can order that both parents have equal decision-making powers, or it can order that only one parent have sole legal custody to make decisions about the child.

Physical custody is with the parent where the child primarily lives. The court can order that both parents have "joint custody" or it can order that one parent will have sole physical custody and the other will have visitation rights.

If the parents cannot agree on child custody, the court will make its own determination. The legal standard the court uses to determine what type of custody orders to make is what it considers to be in the best interest of the child. This is a flexible standard that allows the court to consider the needs of each family and each child. The court may consider the health, safety and welfare of the child, the type of contact the child has with each parent, whether or not a parent has a habitual or continual use of controlled substances or alcohol, whether or not there is a history of abuse against the child, other children, the other parent, or against any other person with whom the parent has been romantically involved. Unless the court determines that contact is not in the child's best interest, the policy favored by the courts is for frequent and continuing contact with both parents.

A petition for divorce or legal separation must be filed to obtain an order for child custody and/or visitation. A request for spousal support may be made along with a request for child support. If someone is married and does not want to start a dissolution or legal separation case, that person may instead file a "Petition for Child Custody and Visitation".

An action for paternity must be filed if the parents are not married. A petition to establish paternal relationship can be filed by either the mother or the father. Requests for orders for child custody, visitation and child support can also be made at the time the action for paternity is filed. If the person requesting custody or visitation is not a biological parent and there is no existing Family Court file concerning the children, an action for guardianship with the Probate Court must be filed.

Filing a Petition to Establish Paternity

A Petition to Establish Parental Relationship may be filed if the petitioner was not married to the other parent of the child, and wishes to establish paternity, child custody and visitation. If a blood test is needed, the petition should state clearly that a blood test is requested. A default and judgment of paternity can be requested against the other parent if a response is not filed.

If the Child Support Services Department is suing for child support, the respondent has only 30 days to answer before a judgment is entered. If the respondent does not file an Answer within 30 days, Child Support Services will file a Default and Judgment, and respondent will have to pay child support, even if respondent never took a blood test and does not believe he was the father of the child.

Setting Aside a Paternity Judgment

If Child Support Services has already entered a judgment against respondent, and respondent wants a blood test to find out if he is the father, a motion to set aside the judgment must be filed. Generally, the motion must be made within six months from the date when the judgment was entered. If the alleged father waits more than six months to file the motion, and was properly served with the original complaint, the judge cannot grant the motion. Once the judgment has become final, it does not matter whether or not the respondent is actually the biological father; he will be held responsible for the support of that child.

Modification of a Child Custody Order

Child custody and visitation orders can generally be modified whenever the court finds a modification is “necessary or proper” in the child’s best interests. The modification can be made by filing either a Notice of Motion or an Order to Show Cause. The parties must go to mediation even if they have previously been to mediation. The parties must show the court that there has been a substantial change of circumstances so affecting the child that modification is essential to the child’s welfare; otherwise, the court will most likely not order modification.

Mediation

Mediation is a process of dispute resolution. California law mandates mediation in every case where child custody and/or visitation is contested. The purpose of mediation is to try to reduce the conflicts and to develop an agreement assuring the child's close and continuing contact with both parents after they separate. The focus of mediation is to help parents share the rights and responsibilities in such a way that the “*best interests of the child*” will not be jeopardized. Mediation attempts to keep conflict between the parents within acceptable bounds. Mediation creates a safety zone where it is safe to meet under reasonable rules of conduct and deal rationally with the issues at hand. The mediator controls the process. The mediator is appointed by the court and must meet various educational qualifications prescribed by law.

The Family Court Services report and recommendation is a summary prepared by the counselor regarding visitation and custody of a child/children after mediation has concluded. Either parent may file a written objection to the report and recommendation. If there is no objection filed by the parties, the court will adopt the report and sign an order.

Grandparents’ Rights

Grandparents can apply to the court for visitation rights in any custody proceeding between the parents, or they can file an independent petition for visitation. The court may decide to grant reasonable visitation to a grandparent, provided the court determines that grandparent visitation is in the child’s best interest.

In order to apply to the court for visitation, grandparents must join in the custody proceeding between the parties or file their own petition. They must give notice of the joinder or petition to each of the child’s parents, including nonparty parents, any stepparent, and any person who has physical custody of the child. Notice must be given by postage-prepaid certified mail, return receipt requested, to the person’s last known address, or to the attorneys who represent the parties in the custody action. If the visitation request is made after judgment has already been entered in the case, the grandparent[s] must serve the parties directly. Service on the attorneys is not sufficient.

Motions for Joinder

Third persons may be joined into an existing family law case as a "Claimant". Examples of third persons would be: Grandparents, employee benefit plans or other interested parties. A Notice of Motion and Declaration for Joinder must be filed. The declaration for joinder must set forth facts showing that each person seeking to be joined claims custody, physical control, or visitation rights with respect to any minor child of the marriage, or who claims control or ownership of any property subject to disposition by the court. Notice of the joinder must be given to each party in the case.

Child Support

There is a general obligation of both parents to support their minor children "in the manner suitable to the child's circumstances." A parent's first and principal obligation is to support minor children according to the parent's circumstances and station in life; and both parents are legally mutually responsible for the support of their children. The statutory duty of support is owed to all minor children of the parents, regardless of whether they are natural or adopted children, born during marriage, or out of wedlock.

Dissomaster is a software program adopted by the Judicial Council that assists courts in calculating child support payments. The court calculates child support according to state guidelines, which are based on the parents' income before taxes, the number of children in the family, the amount of time each parent spends with the children, and certain other factors. The court does not consider the parents' rent, utilities, telephone bill, car payments, house payments or most other living expenses in calculating child support.

Besides each parent's income, the amount of time each parent has physical responsibility for the child is an important factor that is considered by the court. If a parent not living with the child sees the child every other weekend, including overnights, and some additional time such as vacation, the non-custodial parent may receive some reduction in child support. However, parents who have no substantive relationship with their child pay more child support because the child is with the custodial parent 100% of the time.

Child custody and support orders are enforceable in other states along with the state where the case was originally filed.

How to Establish or Modify a Child Support Order

A new child support order, or modification of an existing support order, can be accomplished two ways:

- (1) unless either parent is receiving welfare, the parents can sign a written agreement regarding child support or
- (2) the parties can go to court and have the judge issue a child support order.

Enforcement of Child Support Orders

Child support orders are usually enforced by a Wage Assignment. A Wage Assignment deducts child support directly out of the employee's paycheck. If Child Support Services is seeking child support, a Wage Assignment will be served on the employer. Up to 50% of a parent's net income can be taken through a wage assignment.

Unpaid child support, or "arrear", accumulates interest at the legal rate of ten percent per year. Arrears will accumulate for as long as the child support order remains in effect, or until the child reaches the age of majority. The court will not waive the interest on the arrears. If the person subject to a support order is in arrears, Child Support Services can also have that person's driver's license and other professional licenses suspended, seize bank accounts and tax refunds, and have the person arrested and incarcerated.

In a child support action the court can require the parent who is ordered to pay child support to appear for regular review hearings regarding the parent's efforts to seek and maintain employment.

Spousal Support or "Alimony"

The court may order one spouse to support the other spouse if that spouse is unemployed or unable to provide their own support. Spousal support is only available if the parties were legally married. The State of California does not recognize common-law marriages. Either party must file for a divorce or legal separation in order to get spousal support.

Domestic Violence

A domestic violence restraining order can be obtained to protect a victim or the victim's children from violence or threats of violence. The violence or threats must come from a family member or someone residing in the home, or from someone in a close relationship.

There is a close relationship if the person to be restrained is a spouse or former spouse of the victim. The restrained person could also be someone in a current or prior dating situation, and does not have to be involved in an intimate or sexual relationship. A close relationship includes the mother or father or a child of the victim; someone who is related to the victim by blood, marriage, or adoption; or a person who regularly lives or used to live in the victim's home.

There must be actual or threatened abuse. The person to be restrained must have done one of the following things to the victim or the victim's children:

- (1) Physical or attempted physical injury;
- (2) sexual assault;
- (3) threats of bodily harm;
- (4) attacks by striking or battering;
- (5) molestation;

- (6) harassment;
- (7) stalking;
- (8) harassing or threatening phone calls or messages;
- (9) disturbing the peace

Abuse can be physical, sexual, or verbal. It can include spoken or written abuse. A child custody order can be requested at the time the request for a Domestic Violence Temporary Restraining Order is requested.

If the judge signs a restraining order, the orders must be personally served on the defendant at least five days before the hearing. If the person cannot be served at least five days before the hearing, an Application for Re-issuance must be filed. The re-issuance will require another hearing date, and the other party must be served at least five days before the new hearing date.

If someone is in immediate danger during the hours when the court is closed, a law enforcement officer can issue an Emergency Protective Order that remains in effect for seven days.

Domestic Violence Orders

Personal conduct orders to stop specific acts can be included in a restraining order. This order can stop the restrained person from contacting, sending any message to, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, or telephoning the victim and other persons protected by the order. The order can also prevent the restrained person from destroying personal property or disturbing the peace.

Stay-away orders will keep the person to be restrained from the victim, the victim's residence, place of employment, schools, childcare facilities, vehicles and other places. A residence exclusion (kick-out) order tells the person to be restrained to move out from the residence and take only clothing and personal belongings until the court hearing. Other safety orders can include custody, visitation and child support orders. The court may also issue other orders assigning temporary use, control, and possession of particular vehicles, bank accounts, keys and household items and furnishings that may have been shared with the restrained person. Orders can also be obtained stating who is responsible for payment of specific bills that come due; orders requiring the surrender of firearms; and other orders specific to each case.

Elder Abuse

An emergency protective order may be obtained from the police in cases of imminently threatened elder or dependent adult abuse. During hours that the court is closed a law enforcement officer can issue an Emergency Protective Order that remains in effect for seven days.

Service of Process

Generally, the other party must be served by having court documents delivered to them in person by an adult who is not a party to the case or a process server. The person who serves the documents must complete and sign a Proof of Service form. The Proof of Service must be filed with the Fresno County Superior Court Clerk's Office, Family Law Department before the hearing. If serving a motion, the other party must be served at least 21 days before the hearing. If serving a Domestic Violence restraining order, the other party must be served at least five days before the hearing.

Service by Mail

Some documents can be served by mail. If the other party is served by mail, an adult who is not a party to the case must mail the documents to the other party's last known address. The person who mailed the documents must complete and sign a Proof of Service by Mail form and file the Proof of Service form with the Clerk's Office - Family Law Department.

Adoption

An adoption is filed as a confidential case. In Fresno County adoptions are heard in both Family Law and Juvenile Courts.

Termination of Parental Rights

The court has the authority to terminate a parent's parental rights. The terminated parent has 60 days to file an appeal.

Guardianship of a Minor

Guardianship of a minor may be granted in Family Law, Juvenile Court and Probate Proceedings. If there is a family law case pending, a person desiring to be the guardian of a child should join into the family law case because the probate court will defer to the family court's jurisdiction.

Family Law Facilitator's Office

The Family Law Facilitator's Office was established to assist unrepresented family law litigants with matters relating to child support, spousal support, and health insurance. The Fresno Facilitator's Office offers assistance to all members of the community, regardless of their economic status. While the public is given free information and assistance with court documents and procedures in family law related matters, there is no attorney/client relationship established or representation in court provided. The Facilitator's Office often helps both parties in the same case, and its services are not confidential.

Customers are assisted with the completion of legal forms and are provided general legal information concerning many aspects of Family Law. Informational brochures and self-help pamphlets are available, as well as step-by-step "how to do it" packets for various motions. The majority of customers are seen by appointment. Emergencies and domestic violence situations are handled on a walk-in basis. Referrals are made to other agencies, such as the Marjaree Mason Center and Central California Legal Services. The needs of those incarcerated or living out-of-state are also addressed, either by mail or by telephone conferencing, with follow-up mail consisting of prepared motions, how-to-packets, or forms.

Glossary of Terms – Family Law

Ad Litem. From the Latin: “For the suit”; for the purpose of the suit. A guardian *ad litem* is a guardian appointed to prosecute or defend a suit on behalf of a minor or an adult who is incapacitated.

Adoption. The judicial act creating the legal parental relationship when no genetic linkage exists. The process by which the child’s legal rights and duties toward his natural parents are terminated and similar rights and duties toward his adoptive parents are substituted.

Alimony. Spousal financial support ordered by the court.

Arrearage. Debt or payment that is due and unpaid.

Decree (Interlocutory). Preliminary finding before final disposition.

Decree (Final). Final judgment in which all issues of a case are settled.

De Facto Parent. A person who has been found by the court to have assumed, on a day-to-day basis, care, custody and control of a minor for a substantial period of time.

Dependent. In family law, refers to a person who is financially supported by another person, usually the parent. In juvenile law, refers to a minor who is in the custody of the court because he or she has been abused, neglected, or molested or is physically dangerous to the public due to a mental or physical disorder.

Dissolution. The act of terminating a marriage; divorce. (Compare NULLITY)

Family Court Services. Court department responsible for the mediation of child custody disputes. Mediators prepare reports and recommendations to the court regarding the best interests of the child(ren).

Family Law. A branch of civil law that generally concerns matters related to dissolution of marriage, legal separation of the parties, nullity of marriage, child custody and support matters, and domestic violence petitions.

Child Support Services. Agency responsible for the establishment, collection and enforcement of child support.

Guardian ad Litem. A court-appointed adult who represents a minor. (See AD LITEM)

Mediation. A process in which a neutral third party assists disputing parties in reaching a mutually acceptable settlement. The neutral third party attempts to clarify the dispute for the parties and provides suggestions for resolution. Parents work with a mediator to develop an agreement assuring that the child(ren) will have close and continuing contact with both parents if that is in the best interest of the child. (Compare ARBITRATION, EARLY NEUTRAL EVALUATION)

Nullity. The legal invalidation of a marriage; annulment. (Compare DISSOLUTION)

Paternity Suit. A suit initiated to establish the paternity of a child born out of wedlock.

Respondent. The person against whom an appeal is made; the responding party in a dissolution, nullity, adoption, or probate matter.

Restraining Order. A time-limited order that directs a person to stop doing something until a formal hearing is held. (See INJUNCTION)

Spousal Support. Financial allowance from one spouse to the other ordered by the court urging separation or after dissolution of marriage; alimony. (See NULLITY)

Temporary Restraining Order. Order issued by a judge pending a court hearing. The temporary order is normally valid for a maximum of 15 to 25 days.

Wage Assignment. Pursuant to a court order a party's employer must withhold money from the obligor's pay check and forward the money to the obligee for the payment of child support, spousal support, family support, attorney fees, or other legal claims.

Miscellaneous Family Law Facts

- A Child Support Commissioner is funded under Title IV-D funding to hear child support cases brought by Child Support Services.
- A Civil Harassment Order may be filed in a Family Law case.
- A litigant whose case is scheduled to be heard before a temporary judge must agree and sign a stipulation giving consent for the temporary judge to hear the case.
- A Notice of Motion can be served by mail.
- A party who files an appeal to a Termination of Parental Rights has 60 days to file the appeal.
- A person may obtain a divorce three different ways: Stipulation; Default; or Trial.
- A petition is the first paper filed in a dissolution.

- A Petition to Establish Paternity is filed as a confidential case.
- A proof of service must be completed by a person who is over 18 years of age and not a party to the action or by a registered process server.
- A respondent has 30 days to file a response to a petition in a dissolution case.
- An adoption is filed as a confidential case.
- An Order to Show Cause must be personally served.
- An Order to Show Cause must have a hearing date within 20 days.
- Before becoming married the parties must first obtain a marriage license from the County Clerk.
- Child custody and support orders are enforceable in other states as well as the state where the case was filed.
- *Dissomaster* is a software program approved by the Judicial Council that assists the court in calculating child support payments.
- Domestic violence orders are enforceable in other states as well as the state where the case was filed.
- Family Law cases involving children must have a UCCJA (Uniform Child Custody Jurisdiction Act) form submitted at the time of judgment.
- Family Law cases with visitation and custody concerning children shall be mediated.
- Family Law litigants may file a written objection to the Family Court Services report and recommendation.
- Family Law self-represented litigants are responsible for completing, submitting and serving an Order After Hearing.
- If there is no objection filed by the parties to the Family Court Services report and recommendation, the court will sign and adopt the order.
- In a child support action the court can require the parent who is ordered to pay child support to appear for regular review hearings as to the parent's efforts to seek and maintain employment.

- Marriage is dissolved only by one of the following:
 - (a) The death of one of the parties;
 - (b) A judgment of dissolution of marriage; and
 - (c) A judgment of nullity of marriage.
- Pursuant to Local Rules, mediation as to child custody and visitation must occur before the date and time set for the hearing.
- The Clerk's Office may not reject any papers deemed a late filing.
- The Family Law Facilitator's Office assists self-represented litigants in matters involving child support, spousal support and health insurance.
- To file for an annulment of marriage, there must be one of six causes as prescribed by law:
 - (1) Petitioner's age at the time of marriage;
 - (2) Prior existing marriage;
 - (3) Unsound mind;
 - (4) Fraud;
 - (5) Force; or
 - (6) Physical incapacity.
- When submitting an Application for Waiver of Court Fees and Costs, the requesting party cannot claim any dependants other than those who reside in the household.

THE COURT SYSTEM

California Courts

Under the Constitution of 1849, the courts of the state consisted of a Supreme Court, district courts, county courts, probate courts, and justices of the peace. Legislation enacted in 1976 radically changed the lower court system by giving justice courts the same jurisdiction as municipal courts, by making the same provisions for an appellate department of the Superior Court, and by establishing the same grounds for appeal from justice courts as those applicable to appeals from municipal courts. Justice Courts were consolidated with Municipal Courts in 1995.

The current court structure in California includes the California Supreme Court, consisting of one Chief Justice and six Associate Justices; six Courts of Appeal; and a Superior Court in each of the 58 counties in California.

On the Appellate Court level, there are 6 districts, 18 divisions with 93 justices. Superior Courts operate in 400 locations with 1,480 judges and 363 commissioners and referees.

Appellate Courts

In California, there are two appellate courts: The California Supreme Court and the Courts of Appeal.

Supreme Court

The state's highest court, the Supreme Court may grant review of cases decided by the Courts of Appeal. Certain other cases, such as death penalty appeals and disciplinary cases involving judges and attorneys, are appealed directly to this court. At least four of the seven justices must agree on decisions of the court. The court's decisions are binding on all other state courts.

Courts of Appeal

Panels of three judges hear appeals from superior courts, except in death penalty cases, which are appealed automatically to the Supreme Court. These courts determine whether a trial court committed a legal error in handling the case.

Trial Courts

In the Superior Courts, a judge and sometimes a jury hears witnesses' testimony and other evidence and decides cases on the relevant facts and by applying the relevant law. In the appellate courts, cases are appealed to judges by people who are not satisfied with a trial court decision

Superior Courts

The Superior Courts and the Municipal Courts were unified in 1998. They have trial jurisdiction over all felony cases and all unlimited civil cases involving disputes valued over \$25,000. Superior Courts also serve as probate courts, juvenile courts, and family courts and can hear appeals of limited civil decisions. They hear misdemeanor and infraction cases as well as limited civil matters involving claims for \$25,000 or less, including small claims cases that do not exceed \$5,000. They also preside over arraignments and preliminary hearings to determine whether there is reasonable and probable cause to hold a defendant for further proceedings.

The unification of trial courts was proposed by Senate Constitutional Amendment No. 4 of the 1995-1996 Legislature, which authorized the unification of the municipal and superior court within a county by a vote of the municipal and superior court judges. The measure appeared on the ballot as Proposition 220 and was approved by the voters on June 2, 1998. As part of the unification of trial courts, [California Constitution, Art. VI, § 1](#) was amended at the June 1998 primary election to read: "The judicial power of this State is vested in the Supreme Court, courts of appeal, superior courts, and municipal courts, all of which are courts of record." [California Constitution, Art. VI, § 5\(e\)](#) provides in part: "[T]he municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there

shall only be a superior court." (See [C.R.C., Rule 707](#) [unified court is called Superior Court])

All 58 counties in California have unified, including Fresno. In a unified court, there is no longer a Municipal Court. Instead, civil matters involving claims for \$25,000 or less are treated as limited civil cases. Those claims that are over \$25,000 are treated as unlimited civil cases. On the criminal side, there is no name differentiation between municipal and superior court cases. Municipal court arraignments and preliminary hearings are performed in the Superior Court and defendants are bound over from these hearings for trial in the Superior Court, in the same manner as before unification, except that any reference to "Municipal Court" has been dropped.

Federal Courts

Federal courts include U.S. District Courts, United States Court of Appeals and the United States Supreme Court. There are a few cases which must be filed in federal courts and over which state courts have no power to rule. Some of these exclusive federal cases are patent and copyright claims; admiralty and maritime claims; claims arising out of bankruptcy proceedings; claims under the Sherman Antitrust Act; claims under the Securities Exchange Act; claims involving activities regulated by federal labor laws; and claims under the Medicare Act. Many other cases can be filed either in federal or state court. These are cases that fall within the limited subject matter jurisdiction of federal courts, but which are not "exclusive" to the federal courts. These cases can include actions under the Federal Employers' Liability Act; actions on bonds executed under federal law; actions to recover benefits or enforce rights under the federal Retirement system; actions involving residents from different states, etc.

California Citizens' Rights in Court

California citizens have rights guaranteed by the United States and California Constitutions. These rights include:

- ☞ The right to be presumed innocent if charged with a crime;
- ☞ The right to a public and speedy trial by jury if charged with a misdemeanor or a felony;
- ☞ The right to an attorney at public expense if you are charged with a felony or misdemeanor and cannot afford an attorney;
- ☞ The right to defend yourself against all criminal charges;
- ☞ The right to sue for money owed;
- ☞ The right to defend yourself against a lawsuit.

Juries

In a civil jury trial, each party shall be entitled to six peremptory challenges. If there are more than two parties, the court shall divide the parties into sides, each side being entitled to eight peremptory challenges. In criminal cases the parties are entitled to ten peremptory challenges. California has three kinds of juries: Grand juries, trial juries and juries of inquest.

Glossary of Terms – Courts

Abrogate. To annul, cancel, revoke, repeal, or destroy. To annul or repeal an order or rule issued by a subordinate authority; to repeal a former law by legislative act, or by usage.

Abstract. A summarized record of the actions taken by a court or other governmental agency.

Abstract of Judgment. A legal notice of the final decision of a court awarding monetary judgment that can be recorded.

Acknowledgment. The act of declaring, testifying, or certifying that something is genuine, either orally or in writing.

Action. A proceeding in which a dispute is brought into court for resolution. (See CASE, LAWSUIT)

Active Status. The status of a case when it is within the court's control for purposes of disposition. (See PENDING)

Ad Hoc Vice. An attorney not licensed in California who is allowed to practice for a limited duration and on a specific case[s].

Adjournment. The act of briefly recessing a court session until another time, usually the next court day, or to another place. (Compare CONTINUANCE; See RECESS)

Adjudication. The judgment or decision of a court or jury regarding a case.

Admonition to Jury. A statement given by a judge to a panel of jurors advising them of their duty and expected conduct as jurors, the admissibility or nonadmissibility of evidence, and the purpose(s) for which admitted evidence may be considered. (See INSTRUCTIONS TO JURY)

Adverse Witness. A person whose testimony is unfavorable to the party who called him or her.

Affidavit. A written statement of facts, sworn to under penalty of perjury. (Compare DECLARATION)

Affirmation. A solemn declaration; an oath taken when, for primarily religious purposes, a person does not want to swear to the truth of something.

Allegation. A statement or assertion made without proof.

Amend. To add to or alter a pleading, complaint, or charge that has been filed.

Amicus Curiae. From the Latin: “Friends of the court”; a person invited to advise a court of matters of law in a case to which he or she is not a party. A person with strong interest in or views on the subject matter of an action, but not a party to the action, may petition the court for permission to file a brief, ostensibly on behalf of a party but actually to suggest a rational consistent with its own views. Such amicus curiae briefs are commonly filed in appeals concerning matters of a broad public interest.

Appearance. Coming into court as party to an action either in person or by attorney, as plaintiff or defendant.

Assignment. The act of selecting for a duty or purpose. The act of transferring to another all or part of one’s property, interest, or rights.

Assignment of Cases. Refers to a court’s use of a calendar system to assign cases to judges.

Assignment of Counsel. Refers to the appointment of attorneys for juveniles, conservatees, and indigent criminal defendants.

Assignment of Judges. The function of assigning judges to the various courts to handle vacancies caused by disqualifications, vacations, illnesses, and conduct court calendars.

At-Issue Memorandum. A document filed by one or more parties in a civil case indicating the case’s readiness to be set for trial. (See MEMORANDUM TO SET)

Attorney. A person who is admitted to practice in a court of law and gives legal advice. (See COUNSEL, LAWYER)

Attorney of Record. An attorney named in the permanent case record who represents a party in an action.

Audit. An official examination of records or accounts to check their accuracy and completeness.

Backlog. A total inventory of cases that have not reached disposition within mandated time frames.

Bailiff. A person assigned by a sheriff, marshal, or constable to provide security to a court.

Bankruptcy. A Federal Court proceeding started by a person who cannot pay his or her debts and whose remaining assets are administered by the court for distribution among his or her creditors.

Bar. The whole body of attorneys and counselors, or the members of the legal profession, collectively, who are figuratively called the “bar”. They are distinguished from the “bench” which term denotes the whole body of judges.

Bench. The body of judges composing a court. (See COURT)

Bind. To obligate; to create a legal obligation upon oneself or upon another; to bring or place under definite duties or legal obligations, particularly by a bond or covenant.

Bona Fide. From the Latin: “In or with good faith;” honestly, openly, and sincerely; without deceit or fraud.

Bond. An instrument that binds or creates an obligation to pay a specified amount of money.

Brief. A written argument submitted to the court by counsel setting forth facts and/or law supporting the client’s case.

Calendar. A categorized list of cases to be heard in a court at specific dates and times; to assign a date, time, and court to a case.

Case. A legal dispute brought to a court for resolution. (See ACTION, LAWSUIT)

Case File. The folder that contains the official court documents for a specific case.

Case-Flow Management. The process of effectively managing cases from initial filing through final disposition.

Caseload. The number of cases a judge handles in a specific time period.

Cause of Action. The charges or counts that make the basis for a case.

Caveat Emptor. From the Latin: “Let the buyer beware.”

Certification. A written order by a judge that transfers the jurisdiction of a case to another court. The formal assertion in writing of some fact. The act of or state of being certified.

Certified Copy. An official copy of a particular document from a case file that is notated as a true, complete, and authentic representation of the original document.

Challenge. The act of objecting to or disputing something.

Challenge for Cause. Reasons given by an attorney to support a request that a potential juror or judge be removed from service on a particular case. (Compare PEREMPTORY CHALLENGE)

Citation. An official order from the court notifying a defendant/respondent of the charges being made, and commanding the defendant to appear in court and/or post bail.

Code of Law. A publication that contains the laws regarding a general legal topic: e.g., the Code of Civil Procedure, the Civil Code, the Vehicle Code, the Penal Code, the Health and Safety Code.

Commissioner. An attorney appointed by the court, as a subordinate judicial officer, who is given the power to hear and make decisions concerning certain legal matters: e.g., traffic commissioner, family law commissioner, family support commissioner, juvenile court commissioner. (Compare JUDGE)

Complainant. A person who makes a formal charge in a court of law. (See PLAINTIFF)

Complaint - Civil. In civil proceedings, the complaint is the first written document that the plaintiff files with the court alleging the basis for the suit.

Complaint - Criminal. In criminal proceedings, the complaint is the formal charge filed with the court by the District Attorney alleging that a specified person has committed a crime. (See INFORMATION)

Confidential Record. An official record statutorily defined as unavailable for public review. Such records may include adoption, juvenile, mental health conservatorship, and some family law records, as well as adult criminal probation reports. (Compare PUBLIC RECORD, SEALED RECORD)

Conform Copies. To receive or endorse file copies of an original document.

Consolidation of Actions. The grouping of multiple cases involving the same parties. (Compare COORDINATION OF CASES)

Contempt of Court. An act or omission that obstructs the orderly administration of justice or impairs the dignity, respect, or authority of the court.

Contested. A proceeding in which both parties introduce evidence; a court or administrative proceeding that is opposed by another party or interested person.

Continuance. The adjournment or postponement of an action pending in a court to a future date. (See ADJOURNMENT; Compare RECESS)

Convey. To transfer title to property; to make known or communicate; to transfer or deliver to another.

Coordination of Cases. The assignment of multiple cases with same/like charges or issues to a single jurisdiction within the state to ensure consistent disposition. (Compare CONSOLIDATION OF ACTIONS)

Coram Nobis. From the Latin: “Before us, in our presence”; refers to a writ to bring errors of fact to the attention of the court to have the judgment set aside.

Counsel. A person qualified to represent clients in a court of law and to advise them in legal matters. (See ATTORNEY, LAWYER)

Count. A criminal charge that is filed for an alleged violation of a statute. There may be several counts alleged in a case. Called a cause of action in civil proceedings. (See CHARGE)

Counterclaim. An independent cause of action by one party (either a plaintiff or a defendant) that opposes or offsets a previous claim made by the other party. (Compare CROSS-CLAIM)

Court. A judge or body of judges whose task is to hear cases and administer justice. (See BENCH)

Court of General Jurisdiction. A court that has original trial jurisdiction over all subject matter or persons within its geographical limits. (See SUPERIOR COURT)

Court of Record. A court whose proceedings are permanently recorded. All California courts are courts of record.

Court Liaison Officer. A person representing law enforcement who brings case filings and documents to or from the court.

Court Trial. A trial in which there is no jury and in which a judicial officer determines both the issues of fact and the law in a case.

Decision. A judgment or decree that settles a legal issue.

Declaration. A formal document, not necessarily made under oath, setting forth the facts that support a party's legal allegations. (Compare AFFIDAVIT)

De Facto Parent. A person who has been found by the court to have assumed, on a day-to-day basis, care, custody and control of a minor for a substantial period of time.

Default. The failure to appear, to defend, or to follow proper procedure in a lawsuit.

Default Judgment. Disposition entered when a person fails to appear in or respond to a plaintiff's action.

Defendant. A person required to answer a criminal accusation or civil complaint. (See ACCUSED)

Delay Reduction. Court management of cases to reduce unacceptable periods of time without action.

Delete. To omit or remove.

Deliberate. To consider all of the evidence and arguments presented in regard to a particular matter.

De Novo. From the Latin: “About the new”; trying a matter again as if it had not been heard before.

Deposition. Testimony, either written or oral, given under oath before an authorized third party and not in the presence of the court.

Determination. A judgment or decision by a court ending a lawsuit or controversy.

Dictum. An observation or comment made by a judge that is relevant but not essential to the case determination.

Direct Examination. Questioning of a witness by the party on whose behalf the witness was called to testify. (Compare CROSS-EXAMINATION)

Disbursement. Distribution of money in the manner indicated by the appropriate authority.

Discovery. The procedure by which one party in a case gains information from other parties or persons. (See INTERROGATORIES)

Dismissal. The disposition that occurs when a court orders discharge without further court hearing.

Dismissal (With Prejudice). Permanently bars the right to bring a lawsuit on the same claim or cause.

Dismissal (Without Prejudice). Disposes of the particular lawsuit before the court but permits a new lawsuit to be brought based on the same claim or cause.

Disposition. The determination that finalizes a court case.

Disqualification. Refers to the disqualification of a judge from hearing a case, generally based on any interest that may impair the ability of the judge to decide the case in a fair and impartial manner.

Docket. The permanent, cumulative record of all proceedings of a case; a list of cases on a court's calendar.

Due Process. The established course of judicial proceedings. Due process constitutionally guarantees every person the protection of a day in court, representation by an attorney, and court procedures that are speedy, fair, and impartial.

Early Neutral Evaluation. A process in which a neutral attorney, or a panel of attorneys, facilitates early settlement of a case through a nonbinding case evaluation. The evaluation involves a confidential, frank assessment of the strengths and weaknesses of the parties' positions and the overall value of the case. (Compare ARBITRATION, MEDIATION)

En Banc. From the French: "In a group"; generally refers to decisions by the full court.

Endorse. To sign one's name on a document to authorize its content or transfer.

Enjoin. To command either to do or not to do a specific act.

Equitable. Marked by that which is considered fair and equal as guided by commonsense notions of justice.

Estoppel. An act or statement that precludes a person from later making claims to the contrary.

Et Al. From the Latin: "And others."

Evidence. Documents, testimony of parties or witnesses, or physical objects introduced by a party and admitted by the judge during hearings or trial.

Execute. To complete all the terms of a contract or will; to sign a document; to kill a person by the authority of the state.

Exhibit. Any physical object introduced by a party and admitted by the judge at a hearing or trial.

Exonerate. To clear from blame or to relieve of responsibility.

Expunge. To strike out or erase.

Fee. A fixed monetary charge for service rendered.

Fiduciary. A person who acts as a trustee or primarily for another's benefit.

File. To deposit a document in official court records.

Filing Fees. Amount of money paid to the court to start a civil case.

Finding. A determination of fact by a judicial officer or jury.

Fine. A sum of money a person must pay as punishment because of an illegal act or omission.

Forfeiture. The loss of money or property resulting from failure to meet a legal obligation.

Fraud. An intentional act or statement made to induce another to part with something of value or to obtain or surrender a legal right.

Hearing. A formal court proceeding with all parties in a case present, but without a jury.

Hearsay. Testimony intended to be proof of the truth of a statement, arising not from personal knowledge or experience of the witness but from repetition of what the witness has heard others say; such testimony is generally not admitted into evidence.

Inactive Case. A pending case that has been filed, but for some reason is currently not being processed in the court.

In Camera. From the Latin: “In chamber”; a hearing held in a judge’s chambers or in a courtroom where some of the parties may be excluded and where all spectators are excluded.

Indigent. One who is financially in need.

In Forma Pauperis. From the Latin: “In the way of a pauper”; the official waiver of court costs incurred due to the statutory inability of a party to pay court fees.

In Propria Persona. From the Latin: “In one’s own proper person.” A case in which a party represents himself or herself without an attorney; same as “in pro. per.”

Instructions to Jury. Instructions given by a judge to a jury advising what laws apply to that particular case. (See ADMONITION TO JURY)

Interpreter. A person who has been certified or qualified as having the ability to orally or in writing translate spoken or sign language to the common language of the court.

Interrogatories. A pretrial discovery tool in which a series of written questions are served on a party or a witness and require a written response. (See DISCOVERY)

Inventory. Number of cases in various stages of the court process.

Issue. A matter in dispute between two or more persons.

Joinder. A uniting of multiple causes or parties into a single suit.

Judge. An elected or appointed attorney empowered by law to hear and determine disposition of a legal issue.

Judicial. Belonging to or appropriate to the office of a judge; relating to the administration of justice.

Judicial Council. Body of judges, legislators, and attorneys responsible for administering the state's judicial system by standardizing court administration, practice, and procedure.

Judicial Positions. The judgeships, referees, and commissioners authorized for a particular court.

Jurisdiction. The territory, subject matter, or persons over which lawful authority may be exercised by a court.

Jury. A group of citizens selected according to law and impaneled to determine the issues of fact in a case.

Jury (Grand). A body of citizens whose duties consist of determining whether probable cause exists that a crime has been committed and whether an indictment should be returned and to investigate local governmental agencies.

Jury (Hung). A jury that is unable to agree on a verdict after a suitable period of deliberation.

Jury (Petit). An ordinary jury for the trial of a criminal or civil action.

Jury Commissioner. The local official responsible for providing lists of qualified prospective jurors to the court.

Jury Roster. A list of all the potential jurors asked to appear before the court for selection; the list of jurors impaneled for a case.

Lawsuit. A legal dispute brought to a court for a resolution. (See ACTION, CASE)

Lawyer. A person admitted by the Bar to represent clients in a court of law and to advise them on legal matters. (See ATTORNEY, COUNSEL)

License Hold. The action taken to prevent a driver's license renewal pending settlement of a legal matter.

Litigants. The parties involved in a lawsuit.

Litigation. A lawsuit.

Malfeasance. The performance of an act that is unlawful. (Compare MISFEASANCE, NONFEASANCE)

Mandatory. Required, ordered.

Minor. A person under the age of 18 years. (See JUVENILE)

Minute Order. The official permanent record of a court proceeding: i.e., what witnesses appeared, what motions were made, and what findings were reached. (Compare TRANSCRIPT)

Misfeasance. Improper performance of an act that might have been lawfully done. (Compare MALFEASANCE, NONFEASANCE)

Mistrial. A trial that has been terminated and declared void due to prejudicial error in the proceedings or other extraordinary circumstances.

Modification. A change or alteration.

Moot. An abstract point or question that is not resolved by a judge because it is not disputed by either party, or because it has already been resolved out of court.

Motion. An oral or written request made by a party to the court for a ruling or an order on a particular point.

Nonfeasance. Failure to perform an act for which one is legally responsible. (Compare MALFEASANCE, MISFEASANCE)

Nonservice. Status in which a summons or warrant is issued but not served.

Notary Public. A person authorized under civil law to administer oaths, to attest and certify that certain documents are authentic and to take depositions.

Notice. A written announcement or warning.

Notice of Conditional Settlement. Notice to a court that removes a case from its control pending occurrence of the terms upon which settlement or dismissal of the case are conditioned.

Notice of Motion. Notice to a party that a hearing regarding specific issues will be held on a date and at a time certain. If the party wants to be heard they must appear at the hearing.

Notice of Noncompliance. Notice to a court that the terms of a conditional settlement have not been completed. Filing of this notice acts to restore the case to active status and control of the court.

Nunc Pro Tunc. From the Latin: "Now for then"; phrase used when an order is issued on one date but is effective retroactively.

Objection. A formal protest made by a party during testimony to record claimed inadmissibility of evidence or impropriety of a question being asked.

Obligee. Person to whom money is owed.

Obligor. Person that owes money.

Order. A directive of the court, on a matter relating to the main proceeding, that decides a preliminary point or directs some step in the proceedings.

Order After Hearing. Order prepared by the party or the attorney for the party based on the judge's ruling on a motion or order to show cause.

Order Setting Fee. An order that directs a defendant to reimburse the county for a court-appointed attorney.

Order to Show Cause. An order to appear in a court to give reasons why an action cannot be, should not have been, or has not been carried out.

Order of Suspension. An order that suspends a person's driving privilege, either at the request of the DMV or by order of a court.

Ordinance. A regulation established by local government to enforce, control, or limit certain activities.

Panel. A list of persons who have been summoned for jury duty and from whom a jury may be chosen.

Party. A person or group taking one side of a dispute: e.g., the plaintiff/prosecution or defendant/defense.

Pendente Lite. From the Latin: "During the suit"; orders made during the actual progress of the lawsuit prior to final disposition.

Pending. The status of a case or motion that has not yet been disposed of by the court. (See ACTIVE STATUS)

Peremptory Challenge. A challenge of a potential juror or judge, which requires no stated reason by either party and which results in the juror or judge's disqualification. (Compare CHALLENGE FOR CAUSE)

Petition. A formal, written request presented to the court requesting specific judicial action. (Compare MOTION)

Petitioner. One who presents a petition to the court.

Plaintiff. A person or entity who initiates an action.

Pleadings. Formal allegations by parties of respective claims and defenses.

Points and Authorities. A written legal argument, which includes references to past cases, statutes, and other statements of law, given to support or oppose an issue or point of law.

Polling of Jury. A practice in which jurors are asked individually whether they concur with the verdict as rendered.

Post. From the Latin: “After,” as in “post-trial”; or to display something to bring it to the attention of the public.

Pre. From the Latin: “In front of,” as in “pretrial.”

Presiding Judge/Justice. In a court with multiple judicial positions, the judge or justice who performs the basic administrative functions of managing the court’s business.

Pretrial Conference/Hearing. Any appearance of both parties before the court at any time before trial; usually, a proceeding in which the attorneys appear to discuss the possibility of a pretrial deposition.

Prima Facie. From the Latin: “From first view”; not requiring further support to establish existence, credibility, or validity.

Prima Facie Case. A case sufficient for a decision in favor of the plaintiff, being supported by the necessary minimum evidence and free from obvious defects.

Prima Facie Evidence. Evidence sufficient to support a certain conclusion unless contradictory evidence is given.

Proceedings. The series of events that takes place in the conduct of judicial business.

Process Server. A person employed to deliver a summons, subpoena, or complaint.

Pronouncement of Judgment. The formal issuance by the judge of a judgment in a case.

Proof. Quantity of evidence that tends to establish the existence of a fact at issue.

Proof of Service. The form filed with the court that indicates the date on which documents were formally served on a party in a court action.

Pro Tempore. From the Latin: “For the time being” or “temporarily”; attorney or commissioner sitting temporarily and provisionally as a judge; same as pro tem.

Proximate Cause. That which in natural and continuous sequence, unbroken by any intervening cause, produces injury, and without which the injury would not have occurred.

Public Record. A court record available for inspection by the general public. (Compare CONFIDENTIAL RECORD, SEALED RECORD)

Purge. To eliminate inactive records from court files.

Quash. To end, to set aside, or to make void.

Rebuttal. Action in which one party at a trial presents evidence intended to counteract or disprove evidence introduced by the other.

Recess. A brief period during which the court suspends business. (See ADJOURNMENT; Compare CONTINUANCE)

Record. The account maintained by the official court reporter of all proceedings at a trial.

Records Retention and Disposal Schedule. A system or plan covering all records kept by a court, which states what may be disposed of and when.

Register of Actions. The official permanent court record of actions in civil cases, including small claims.

Reporter. A certified individual responsible for recording the proceedings in trials, including the questions addressed to and answers made by witnesses.

Request for Admission. A method of discovery in which one party formally and in writing asks the opposing party to admit the truth of certain facts relevant to a case.

Reset. To re-calendar a matter.

Revocation. The act of voiding or canceling something, usually probation or a driver's license.

Sanction. To concur, confirm, or ratify; a penalty or punishment to enforce obedience to the law.

Satisfaction. Payment of amount of judgment by the losing party.

Sealed Record. A record closed by a court to further inspection by anyone unless ordered by the court. (Compare CONFIDENTIAL RECORD, PUBLIC RECORD)

Sequester. To separate or isolate, as in to sequester assets or to sequester witnesses during a trial.

Service of Process. The act of delivering an order or summons to the intended person.

Settlement. An agreement reached between the parties that resolves a case at any time before court findings or a jury verdict.

Severance of Actions. To separate multiple criminal actions, defendants, causes of action, or cross-complaints for separate trials.

Statement of Facts. Any written or oral declaration of facts in a case.

Statute. Any written law passed by a state or federal legislative body.

Statute of Limitations. Statute setting the maximum time period during which a person or entity may initiate a suit against another on a specific cause of action.

Statute – Time Limit. A time frame set by law in which certain actions must occur unless waived by the plaintiff.

Stay Order. An order issued by a court halting court proceedings until another event takes place.

Stipulation. An agreement between parties or their attorneys.

Strike. To delete or remove.

Sua Sponte. From the Latin: “Of its own will”; commonly used when a judge does something without being so requested by either party in a case.

Subpoena. A writ issued by a court that compels a person to appear and give testimony at a specified time and place.

Subpoena Duces Tecum. A subpoena that, in addition to compelling the appearance of a witness, commands that specific documents be produced at the time of appearance.

Subrogate. To substitute one person in place of another with reference to a lawful claim, so that the person acting as the substitute inherits the rights and responsibilities related to the claim.

Summons. A mandate to a defendant to answer a complaint within the statutory time limit under penalty of having a default judgment entered against him or her.

Superior Court. The trial court of general jurisdiction in each county of the State of California. This court hears all adoption, conciliation, family law, juvenile, civil, small claims, traffic, and probate matters; has trial jurisdiction over all criminal and civil cases; and acts as an appellate court to review limited civil case decisions.

Suppress. To stop or put an end to something.

Surety Bond. An instrument that binds or creates an obligation to pay a specified amount of money. An insurance policy taken out by a defendant to ensure bail required for the defendant's release should he or she fail to make court appearances.

Suspend. To postpone, stay, or withhold certain conditions for a period of time.

Temporary Restraining Order. Order issued by a judge that requires someone to do or not do something pending a hearing.

Third-Party Action. An action taken by anyone who is not a party to a contract, agreement, or other transaction.

Title. The ownership or evidence of ownership of land or other property.

Transcript. An official, written, verbatim record of a judicial proceeding. (Compare MINUTE ORDER)

Transfer. A judicial order transfers a case from one court to another.

Trial. The hearing and determination of issues of fact and law, in accordance with prescribed legal procedures, in order to reach a disposition.

Trial (Bench). A bench or court trial is heard and decided by a judge.

Trial (Jury). A jury trial is heard and decided by a jury, which usually consists of 12 people.

Trust. A legal instrument to hold funds or property.

Trustee. A person who has custody of or control over funds or property for the benefit of another.

Trust Fund. Money, stocks, bonds, or securities held by or under the control of a trustee for the use and benefit of another.

Venire. From the Latin: "To come"; to appear before the court.

Venue. The geographical limits of a court's jurisdiction; the venue of a superior court is a county. (See CHANGE OF VENUE)

Verification. An oral or written statement that something is true, usually sworn to under oath.

Violation. A breach of a right, duty, or law.

Voir Dire. From the French: "To speak the truth."

Waive. To give up a legal right voluntarily, intentionally, and with full knowledge of the consequences.

Witness. A person who testifies as to what was seen, heard, or otherwise known.

Writ. A written order or directive issued by a court commanding that certain action be taken.

Writ of Attachment. Orders that specified property be attached.

Writ of Certiorari. An order by an appellate court granting or denying a review of judgment.

Writ of Habeas Corpus. Orders the release of someone who has been unlawfully imprisoned.

Writ of Mandamus. Orders the performance of any act designated by law to be part of a person's duty or status.

Writ of Prohibition. An order, usually from a superior court to a lower court, that further proceedings or other official acts be stopped so that the lower court does not exceed its jurisdiction.

Juvenile Law- Delinquency and Dependency

The Superior Court Juvenile Delinquency Division has jurisdiction over minors (under age 18) alleged to have committed criminal acts, including infractions, misdemeanors, and felonies. Although criminal acts committed by juveniles are usually the same ones that adults can be charged with, the laws and procedures governing juvenile cases are entirely different. Minors are not arrested, they are detained. The first document filed in a juvenile case is an original or supplemental petition that is filed by the District Attorney's Office. For the minor to be detained, a judicial officer must find probable cause that the accused minor committed the alleged crime. Almost all juvenile court proceedings are confidential, which means that the minor's name and other information about the case cannot be disclosed, and court hearings are closed to the public. There are very short time deadlines in which juvenile cases must be heard. There is no right to bail, but minors may be released from custody under supervision or electronic monitoring. Minors have the right to a trial before a judge, but are not entitled to a jury trial. If the criminal allegations are adjudged to be true, the minor is declared a ward of the court, and may be committed to the California Youth Authority or to county facilities and programs such as in Fresno County, a minor accused of a crime may be detained in, or by way of, one of the following: Juvenile Hall; Wakefield School; Elkhorn Bootcamp; Electronic Monitoring; or Supervised Home Detention.

The Superior Court Juvenile Dependency Division has jurisdiction over cases involving allegations of child abuse or neglect. In dependency cases the Department of Children and Family Services files an original petition. The Department prepares and files a report with the court setting forth its recommendations as to the best interest of the minor child(ren).

Glossary of Terms – Juvenile Law

Court Appointed Special Advocate (CASA). A CASA volunteer is a trained citizen who is appointed by the Dependency Court Judge to represent the best interests of a child in court.

California Youth Authority (CYA). State detention facility designated for juveniles.

Delinquent. A minor who has committed an act that would be a crime if it were committed by an adult.

Department of Social Services. Investigative agency for the Juvenile Court that is responsible for the preparation of a report and recommendation setting forth the best interest of the minor(s) in a dependency action.

Dependent. In family law, refers to a person who is financially supported by another person, usually the parent. In juvenile law, refers to a minor who is in the custody of the court because he or she has been abused, neglected, or molested or is physically dangerous to the public due to a mental or physical disorder.

Detention. Temporary custody of an adult or a juvenile while the court forms a final decision.

Fitness Hearing. A hearing held in Juvenile Court to determine if a minor is fit for Juvenile Court. If found unfit, the minor is tried as an adult in the criminal court.

Jurisdictional Hearing. Hearing at which the Juvenile Court determines if the allegations set forth on the petition are true or untrue.

Juvenile. A person under the age of 18 years. (See MINOR)

Juvenile Court. A division of superior court that hears two types of cases: Dependency cases involving abused or neglected children; and delinquency cases involving minors accused of a crime.

True Finding. The juvenile court equivalent of a guilty verdict.

Ward of the Court. A minor who is under the care and control of the court rather than the parent(s).

Miscellaneous Juvenile Law Facts

- A minor may enter a plea in a delinquency case just as an adult may enter a plea in a criminal case.
- ALL Juvenile Court cases and hearings are confidential.
- Allegations against a minor are found to be true or not true.
- As in an adult criminal case, in a Juvenile Court delinquency hearing the District Attorney represents the People. However, in a Juvenile Court dependency hearing the District Attorney represents the minor child(ren).
- In a juvenile delinquency matter, a judicial officer must find probable cause that the accused minor committed the alleged crime in order for the minor to be detained.
- In a juvenile delinquency matter, the District Attorney's Office files the original petition.
- In a juvenile delinquency matter, the probation officer files a report regarding the minor, the severity of the crimes committed and a recommended sentence.
- In a juvenile dependency matter, the Department of Children and Family Services files the original petition.
- In a juvenile dependency matter, the Department of Children and Family Services prepares and files a report to the court setting forth a recommendation as to the best interest of the minor child(ren).
- In Fresno County Superior Court, juvenile traffic matters are heard in the Traffic Department in the Central Courthouse.
- The first document filed in a juvenile case is a petition.

Probate

In Fresno County, the Superior Court Probate Department has jurisdiction over the following:

- (a) Wills;
- (b) Trusts;
- (c) Guardianships;
- (d) Conservatorships;
- (e) Mental Health matters; and
- (f) various other cases falling under the Probate Code and the Health and Safety Code.

In probate proceedings, the Civil Code and the Code of Civil Procedure govern any matters that are not covered by the Probate Code. Petitions to Determine Fact of Birth, Death, or Marriage are filed with the Probate Department. Fifteen (15) days notice must be given for petitions in most probate matters.

If there is a family law case with a custody matter currently awaiting hearing, a person desiring to be the guardian of a child should join into the family law case because the probate court will defer to the family court's jurisdiction.

Relationships in Probate

A personal representative, trustee, guardian, conservator and attorney-in-fact are all fiduciaries under probate law. An executor, administrator, administrator with the will annexed, and special administrator, are all personal representatives. A testator, settlor, grantor or owner can all be transferors.

Beneficiary

A beneficiary is a person who receives assets from a probate estate or a trust. A devisee is the beneficiary of a testate decedent (one who dies with a valid will). An heir is the beneficiary of an intestate decedent (one who dies without a will).

Will

A will is a written document through which a person can direct how their property is to be distributed upon their death. A codicil is an addition to or an amendment of a will. Wills may be revoked and replaced by new wills. Upon death, when a probate is required, a petition for probate is filed by the personal representative. The "issue" of a person includes all lineal descendants of all generations. Relatives within the second degree include parents, spouse, children, siblings, grandparents, and grandchildren.

Conservatorship

A conservator may be appointed for any person (conservatee) who is unable to manage his or her financial resources or properly provide for his or her personal needs, such as food, clothing and shelter.

There are various types of conservatorships that are authorized by the Probate Code:

- (1) When the conservatee is unable to provide properly for his or her personal needs the court can appoint a conservator of the person. The conservator's powers may be limited or unlimited, depending on the circumstances.
- (2) When the conservatee is substantially unable to manage his or her financial resources or resist fraud or undue influence, the court can appoint a conservator of the estate. Substantial inability may not be proved solely by isolated incidents of negligence or improvidence. As with the conservator of the person, the powers of the conservator may be limited or unlimited.
- (3) There may be both a conservator of the person and a conservator of the estate. The conservator for the person and the estate are usually the same person but not always.
- (4) A limited conservator of the estate and/or of the person may be appointed for the developmentally disabled. Its purpose is to help developmentally disabled adults lead more independent, normal and productive lives. A person with dementia can be placed in a locked care facility by a probate conservator who has been granted the power to do so by the court.

Under the Welfare and Institutions Code, a gravely disabled person may be cared for as provided by the Lanterman Prentiss Short (LPS) Act. Probate Conservatorships are only established for adults, and Probate Guardianships are for minors; but a minor can be subject to an LPS conservatorship. In Fresno County, only the Public Guardian may initiate an LPS Conservatorship case, and they are represented by County Counsel.

In all guardianships and conservatorships, medical reports and investigation reports are filed in confidential envelopes and are not public records.

Trust

A trust is a written estate planning document that may be effective during the trustor's lifetime or after his/her death. Assets placed in trust are not part of a person's estate, and are therefore not subject to probate on their death. The trust instructs the Trustee to distribute the assets of the estate without court supervision. However, the trustee of a trust may file a petition asking the court for instructions on matters having to do with the administration of a trust.

Glossary of Terms - Probate

Ad Litem. From the Latin: "For the suit"; for the purpose of the suit. A guardian *ad litem* is a guardian appointed only to prosecute or defend a suit on behalf of a minor or an adult who is incapacitated. This person is not the guardian of the child for all purposes.

Codicil. A supplement or amendment to a will.

Commitment Order. A court order directing that a person be kept in custody, usually in a penal or mental institution.

Conservatee. A person who is unable to care for himself or herself and who has a court-appointed conservator.

Conservator. A person appointed by the court to take care of a conservatee and/or the conservatee's property.

Decedent. A person who is no longer living.

Estate. All property owned by a person, living or dead.

Execute. To sign a document.

Fiduciary. A person who has a duty to act primarily for the benefit of another.

Guardian ad Litem. A court-appointed adult who represents a minor or an incapacitated adult. (See AD LITEM)

Heirs. A person who inherits or receives property from someone who has died without a will.

Intestate. To die without making a will. (See TESTATE)

Inventory and Appraisement. A listing of the estate assets (property and possessions) and their value as of a particular date.

Probate. The court supervised administration of a decedent's estate, whether testate or intestate.

Probate Examiners. Court staff who review documents for technical and legal accuracy. They provide written case notes to the court regarding all matters before the court.

Probate Investigators. Court staff who are responsible for the investigation and preparation of a report and recommendation regarding the best interest of an adult in a conservatorship or a minor in a guardianship.

Respondent. The person against whom an appeal is made; or the responding party in a dissolution, nullity, adoption, or probate petition.

Spousal Property Petition. A petition filed by a surviving spouse to transfer assets to the spouse without the need for a probate administration.

Testate. To die having left a valid will. (Compare INTESTATE)

Trustee. A person who has custody of or control over funds belonging to another.

Will. A written document, signed and witnessed as required by law, in which a person expresses his wishes for disposition of his real and personal property, and for the future care of children, pets, etc., following his death.

Miscellaneous Probate Facts

- A beneficiary is a person or that person's successor in interest to whom a donative transfer of property is made.
- A codicil is an addition to or an amendment of a will.
- A devisee is the beneficiary of a testate decedent.
- A person with dementia can be placed in a locked care facility by a probate conservator who has been granted the power to do so by the court.
- A testate, settlor, grantor and an owner can all be transferors.
- An executor, administrator, administrator with the will annexed, and special administrator, are all personal representatives.
- An heir is the beneficiary of an intestate decedent.
- An LPS Conservatorship can be established for a person who is gravely disabled in order for them to be placed in a locked care facility.
- Conservatorships are established for adults and guardianships for minors, however, a minor can be subject to an LPS conservatorship.
- Fifteen (15) days notice must be given for petitions in most probate matters.
- If there is a family law case pending, a person desiring to be the guardian of a child should join into the family law case because the probate court will defer to the family court's jurisdiction.
- In Fresno County, the Public Guardian is the petitioner in all LPS Conservatorship cases and is usually represented by the County Counsel.
- In guardianships and conservatorships, medical reports and investigation reports are filed in confidential envelopes.
- Most trusts are not under the jurisdiction of the court.
- Personal representatives, trustees, guardians, conservators and attorney-in-fact are all fiduciaries under probate law.

- Petitions to Determine Fact of Birth, Death, or Marriage are filed with the Probate Department.
- Relatives in the second degree include parents, spouse, children, siblings, grandparents, and grandchildren.
- The filing fee for a probate petition is \$230.
- The trustee of a trust may file a petition asking the court for instructions on matters having to do with the administration of a trust.
- Thirty (30) days notice must be given for petitions related to trust matters.

Small Claims

In small claims court a person may sue for the recovery of money only where the amount claimed does not exceed \$5,000. The claim must be served on the defendant in order for the matter to be heard. The claim may be served for a fee by certified mail sent by the Clerk's Office, or personal service by the Sheriff's Department or a process server. A person who is not a party may also serve the claim. When a small claims defendant believes that money is not owed to the plaintiff, but that in fact the plaintiff owes the defendant money, the defendant may file a counter-claim with the clerk.

A court date will be set within 30 to 40 days if the defendant resides in the county or 60 to 70 days if the defendant resides outside the county. When there are two or more defendants in a small claims action and one or more of them resides outside the county in which the action is brought, the date for the appearance of all the defendants shall not be more than 70 days from the date of the order to appear.

An appeal from a judgment in a small claims action is made by filing a notice of appeal with the clerk no later than 30 days after the clerk has delivered or mailed the notice of entry of judgment to the parties. Only the defendant may appeal the judgment. During the time the appeal is pending and until another judgment is rendered, the small claims court judgment is stayed.

Glossary of Terms – Small Claims

Small Claims Case. A minor civil case for monetary judgment.

Small Claims Court. The division of a limited court that handles all civil cases claiming monetary wards of \$5,000 or less. In such cases, there are no attorneys, no rules of evidence, no juries, and no formal findings.

Traffic

Driver's Licenses/Insurance

All persons operating a motor vehicle on California streets and highways must have a valid California driver's license or license from their state of residence in their possession, as well as proof of insurance or financial responsibility. A California driver's license held by any person who is in the U.S. Armed Forces shall continue in full force and effect so long as their military service continues, and for 30 days after the holder is honorably separated from the service or returns to this state; unless the license is sooner suspended, canceled, or revoked for cause as provided by law.

A nonresident over the age of 18 years whose home state or country does not require the licensing of drivers may operate a foreign vehicle owned by him/her for period not to exceed 30 days without obtaining a license. Persons from another state who change their residency to California must obtain a California license within 10 days of becoming a California resident. Residency means the place where a person has a permanent home at which they intend to reside, as evidenced by such things as voter registration, payment of resident tuition at public institutions of higher learning, or other acts that indicate that the person's presence in California is more than temporary.

A driver whose address changes after applying for or receiving a California driver's license must notify the Department of Motor Vehicles (DMV) of their old and new address within 10 days of the change.

If a person who is cited for not having a driver's license in possession appears and presents his/her driver's license to the court, the court may dismiss the charge, provided the license is current and upon payment of a \$10.00 transaction fee.

Drivers must present proof of insurance if they are involved in a traffic accident, or upon request of a law enforcement officer stopping the motorist for a traffic violation.

Suspension of Driver's Licenses

It is unlawful to operate a motor vehicle under the influence of alcohol or drugs, or with a blood alcohol level of 0.08% or more (0.05% for persons under age 21). Upon arrest for driving under the influence of intoxicating liquor and/or a drug, a license is suspended by DMV. Upon conviction for a second offense within seven years, an automatic license suspension by DMV for 18 months is mandatory. The license will not be reinstated until the defendant completes a court-ordered treatment program and provides proof of ability to respond in damages (insurance). Conviction of third or subsequent offenses will result in revocation of driving privileges. DMV also imposes mandatory license suspensions of any person operating a motor vehicle with a blood alcohol level of 0.08% or more, even if the person is not convicted of a DUI offense by the court.

A judgment creditor may file a notice with the Department of Motor Vehicles requesting suspension of a judgment debtor's privilege to operate a motor vehicle when a judgment was the result of an motor vehicle accident on a California highway involving the judgment debtor and was for damages for bodily injury, or for property damage of \$500 or more; if the judgment has remained unsatisfied (unpaid) for more than 30 days after the judgment became final.

Other grounds for suspension of driver's licenses include negligent or incompetent operator (excessive moving violations or unsafe driver), failure to appear, physical condition, DUI or drug convictions, and lack of insurance. Driving on a suspended license is a misdemeanor violation (V.C. 14601).

Vehicle Registration

Every person convicted of Vehicle Code Section 4000(a)(1) (expired registration) shall be punished by a fine of not less than \$100; however, this citation may be dismissed upon proof of registration and payment of a \$10 transaction fee.

Whenever the owner of a vehicle transfers their interest in and delivers possession of a vehicle to another person, the owner shall notify DMV of the transfer within five calendar days.

Commercial vehicles registered in a foreign jurisdiction may secure temporary registration for 90 days, or a trip permit for four consecutive days.

Correctable Mechanical Violations

A law enforcement officer stopping a vehicle with mechanical violations may issue a notice of correction unless the officer finds evidence of fraud or persistent neglect, the violation presents an immediate safety hazard, or the violator does not agree to or cannot promptly correct the violation. Correctable violations may be dismissed by the court upon proof of correction and payment of a \$10.00 transaction fee.

Automobile Accidents

The driver of a vehicle, other than a common carrier vehicle, involved in any accident resulting in injuries to or death of any person shall make a written report of the accident on a DMV approved form within 24 hours after the accident occurred to the California Highway Patrol or the police department of the city in which the accident occurred. An accident report must also be made to DMV when the accident results in damage over \$500 or in bodily injury or in death.

Streets and Highways

A "street" is any publicly maintained road or highway that is open to the use of the public for vehicle traffic. An "alley" is a roadway not exceeding 25 feet in width that is primarily used for access to the rear or side entrance of abutting property. All provisions of the Vehicle Code are applicable on streets and alleys.

Under the basic speed law, no person shall drive at a speed greater than is reasonable or prudent having regard for weather, visibility, traffic, width, and surface of highway and in no event which endangers person or property. The speed limit in residential and business districts and school zones is 25 MPH.

Any person who drives a motor vehicle upon a highway shall be deemed to have given consent to a chemical test (blood, urine or breath) for the purpose of determining the alcoholic content of his/her blood if lawfully arrested for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor.

It is unlawful for a driver to transport a child not secured in a child passenger seat restraint system if that child is less than six years old or less than 60 pounds.

No persons operating any motor vehicle or bicycle except the hard of hearing shall wear headsets or earplugs in both ears.

All drivers, and any passengers riding a motorcycle on a highway are required to wear a safety helmet.

Abstracts and Other Documents Forwarded to DMV in Sacramento

Every clerk of a court in which a person was convicted of any violation of the Vehicle Code shall prepare an abstract and immediately forward it to DMV at its office in Sacramento within 30 days following the conviction. An abstract to DMV must contain the docket number, conviction date, court identification and court seal. An abstract need not be sent to Sacramento for a parking in a crosswalk violation. The following violations are not reportable to DMV:

- (a) Cited while operating a bicycle; and
- (b) cited while a pedestrian.

The clerk shall forward to the DMV a VC 16373 certificate of facts if a judgment for damage to property in excess of \$500 remains unsatisfied for 30 days after the judgment becomes final.

Moving Violations

Most moving violations are given one traffic point count. A conviction of violation of VC 20002 (Hit and Run), VC 23152 (Drunk Driving), or VC 23103 (Reckless Driving) shall be given a value of two traffic points.

It is presumed that a person is a negligent operator if he/she has four or more points in 12 months; six or more points in 24 months; or eight or more points in 36 months. DMV may suspend the driving privileges of negligent operators.

After a ticket has been issued, no change of venue is specifically permitted. However, at the time of issuance of a citation, the violator may demand to be cited to the county seat.

A bail forfeiture is not technically a conviction. However, under the Vehicle Code it is deemed to be equivalent to a conviction. Most defendants opt to post and forfeit bail.

Infractions

Every person convicted of an infraction for a violation of the Vehicle Code shall be punished upon a first conviction by a fine not exceeding \$100 and for a second conviction within a period of one year by a fine not exceeding \$200, except certain designated offenses that have higher fines.

Every person convicted of an infraction of parking in a space designated for disabled shall be punished by a fine not less than \$250.

Traffic fines are subject to a penalty assessment of \$22 for each \$10 dollars of the fine. Thus, a fine of \$100 has a penalty assessment of \$240 added, for a total of \$340.

In lieu of conviction or bail forfeiture, defendants can elect to attend traffic school once every 18 months. The full amount of bail and a \$39 court administrative fee must be paid before attending. Upon proof of completion the citation is dismissed.

Juvenile Traffic

In Fresno County Superior Court, juvenile traffic matters are heard by a Traffic Hearing Officer assigned by the Probation Department to the Traffic Department in the Central Courthouse. In the outlying courts juvenile traffic cases are heard by the outlying court judge. Juvenile traffic cases are confidential and a parent must appear along with the juvenile.

Glossary of Terms – Traffic

Cited. A condition in which a defendant is not in custody but has signed a citation agreeing to appear in court on a specified day.

Citing Authority or Agency. A law enforcement agency, such as city police or the California Highway Patrol, that has the power to arrest persons for violation of the law.

Courtesy Notice. A computer-generated notice, generally sent for traffic violations, to advise a defendant of what needs to be done to take care of the matter.

Fix-It Ticket. Colloquial term for a traffic citation issued due to a mechanical malfunction on a vehicle that can be corrected.

Illegal Parking. Violation of any parking regulation established by state statute or local ordinance.

Order of Suspension. An order that suspends a person's driving privilege, either at the request of the DMV or by order of a court.

Revocation. The act of voiding or canceling something, usually probation or a driver's license.

Miscellaneous Traffic Facts

- A bail forfeiture is not a conviction. However, under the Vehicle Code it is deemed to be equivalent to a conviction.
- A California driver's license held by any person who enters or is in the U.S. Armed Forces shall continue in full force and effect so long as the service continues and the person remains absent from this state and for a period not to exceed 30 days following the date on which the holder is honorably separated from the service or returns to this state.
- A license will not be suspended by DMV [VC 13352(3)] unless the court recommends it upon a conviction for the first offense of driving under the influence of intoxicating liquor and/or a drug. Upon conviction for a second offense within seven years, automatic suspension by DMV is for 18 months, and the license will not be reinstated until the defendant provides proof of ability to respond in damages.
- A nonresident over the age of 18 years whose home state or country does not require the licensing of drivers may operate a foreign vehicle owned by him/her for a period not to exceed 30 days without obtaining a license.
- A person committed to the custody of the Director of Corrections is entitled to not be prosecuted for a moving or pedestrian violation.
- A person who flees or attempts to elude a pursuing peace officer with willful and wanton disregard for the safety of persons and property shall be punished by imprisonment in state prison, imprisonment in county jail not more than one year, or a fine not less than \$170 or more than \$2,000.
- A residential district is that portion of a highway, other than a business district, upon which fronting thereon is occupied within a quarter mile by 13 or more separate dwellings on one side, or 16 more dwellings on both sides.
- After a law enforcement stop for a mechanical violation, a notice of correction may be issued unless the officer finds evidence of fraud or persistent neglect, the violation presents an immediate safety hazard, or the violator does not agree to or cannot promptly correct the violation.
- After an accident, an accident report on a DMV approved form must be made to DMV when the accident results in damage over \$500 or in bodily injury or in death.

- An “alley” is any road having a roadway not exceeding 25 feet in width that is primarily used for access to the rear or side entrance of abutting property.
- An abstract need not be sent to Sacramento for a parking in a crosswalk violation.
- An abstract to DMV must contain the docket number, conviction date, court identification and court seal.
- Any conviction of a violation of VC 20002 (Hit and Run), VC 23152 (Drunk Driving), or VC 23103 (Reckless Driving) shall be given a value of two traffic points.
- Any offense that would otherwise be an infraction is a misdemeanor if a defendant has been convicted of three or more infractions within the previous 12 months.
- Any person who drives a motor vehicle upon a highway shall be deemed to have given consent to a chemical test (blood, urine or breath) for the purpose of determining the alcoholic content of his/her blood if lawfully arrest for any offense allegedly committed while the person was driving a motor vehicle under the influence of intoxicating liquor.
- Commercial vehicles registered in a foreign jurisdiction may secure temporary registration for 90 days or a trip permit for four consecutive days.
- Every clerk of a court in which a person was convicted of any violation of the Vehicle Code shall prepare an abstract and immediately forward it to DMV at its office in Sacramento within 10 days.
- Every person convicted of an infraction for a violation of the Vehicle Code shall be punished upon a first conviction by a fine not exceeding \$100 and for a second conviction within a period of one year by a fine not exceeding \$200.
- Every person convicted of an infraction of parking in a space designated for disabled shall be punished by a fine not less than \$250.
- Every person convicted of an infraction of Vehicle Code Section 4000 shall be punished by a fine of not less than \$50 and not more than \$250.
- If a driver changes his/her address after applying for or receiving a California driver’s license, he/she shall notify the Department of Motor Vehicles (DMV) of the old and new address within 10 days.
- If a person convicted of an infraction fails to pay a fine, the court may impound the person’s driver’s license for a period of not to exceed 30 days.

- If a person who is cited for not having a driver's license in possession appears and presents his/her driver's license to the court, the court may dismiss the charge, provided the license was valid at the time the citation was issued.
- In driving a school bus outside of a business district and residential area, a bus must follow another at 300 feet apart.
- In the citing of an auto illegally parked, a prima facie case is made out against the registered owner.
- It is presumed that a person is a negligent operator if he/she has:
 - (1) four or more points in 12 months;
 - (2) six or more points in 24 months; or
 - (3) eight or more points in 36 months.
- No motor vehicle, except an authorized emergency vehicle, shall follow within 300 feet of any authorized emergency vehicle being operated.
- The basic speed law provides that "No person shall drive at a speed greater than is reasonable or prudent having regard for weather, visibility, traffic, width, and surface of highway and in no event which endangers person or property."
- No persons (except the hard of hearing) operating any motor vehicle or bicycle shall wear headsets or earplugs in both ears.
- On a second conviction for driving under the influence of alcohol within seven years, a defendant must be confined for not less than 90 days.
- Speed contests under VC 23109 are know as and may be cited as the Louis Friend Memorial Act.
- The driver of a vehicle, other than a CVC common carrier vehicle, involved in any accident resulting in injuries to or death or any person shall, within 24 hours after the accident, make a written report of the accident to the Department of California Highway Patrol or the police department of the city in which the accident occurred.
- The fine for a second conviction for littering is not less than \$500 or more than \$1,000.
- The minimum legal age to operate a school bus is 18 years.
- The maximum fine for allowing a person under four years old or 40 pounds to ride on a bicycle as a passenger without a helmet is \$96.
- The maximum penalty for reckless driving is \$1,000 and/or 90 days.

- The minimum fine on a first offense driving under the influence is \$1,511.
- The minimum number of days a person must serve in jail on a second conviction within five years of a prior conviction for driving when his/her license has been revoked for reckless driving is 10 days.
- The person arrested must be taken before a magistrate without unnecessary delay when he/she fails to exhibit a license or other ID.
- The term “traffic” includes vehicles, pedestrians, and ridden animals.
- The time to appear on a written notice to appear shall be a specific date which is at least 21 days after the arrest.
- Unless a different penalty is expressly provided by the Vehicle Code, every person convicted of a misdemeanor for a violation of any of the provisions of this code shall be punished by a fine not exceeding \$1,000 or 6 months or by both such fine and imprisonment.
- Upon an application for a driver’s license or for a change of name on a driver’s license, there is a fee of \$12 to be paid to the DMV.
- When a person is taken into custody for a misdemeanor or infraction or any violation that occurs as a result of operating a motor vehicle, an officer may detain the person in custody for a reasonable period of time not to exceed two hours in order to verify his identity.
- When a person signs a written promise to appear for an alleged violation of the Alcohol Beverage Control Act and fails to appear and has not posted bail, the judge shall issue a warrant for his/her arrest within 20 days after his/her failure to appear.
- When traversing a railroad crossing and the last 100 feet are not clear, the speed limit is 15 miles per hour.
- Whenever any person has for a period of 15 or more days violated his/her written promise to appear in court or before the person authorized to receive a deposit of bail or violated an order to appear in court or to pay a fine, the magistrate or clerk of the court may give notice of such fact to the DMV. Such notice shall be given within 60 days from failure to appear.
- Whenever the owner of a vehicle transfers their interest in and delivers possession of the vehicle to another, the owner shall notify DMV within five calendar days.

MISCELLANEOUS DEFINITIONS & FACTS

- A “recidivist” is a habitual offender.
- A judge’s signature is not required to be on a summons.
- A Judgment Book is defined as a book containing the original judgment of each and every municipal and superior court judgment.
- A justice of the circuit court is not a magistrate.
- A reckless driving conviction is punishable by a minimum jail term of five (5) days.
- A writ requiring a person or a corporation to refrain from a particular act is called an injunction.
- An attorney may never reveal to the defendant information relating to the address or phone number of the victim or witness in a criminal case.
- An order issued by a superior court directing an inferior court to send up to the former some or all of the record of a case tried in the inferior court, for review or trial, is called a Writ of Certiori.
- Conspiracy is defined as “to cheat and defraud a person of any property by criminal means, or to obtain money or property by false pretenses or by false promises with fraudulent intent.”
- Every person who unlawfully and maliciously deprives a human being of a member of his/her body is guilty of mayhem. Mayhem is a form of maiming.
- Homicides which do not constitute crimes and which are not punishable are those where death was caused by the doing of a lawful act.
- Pursuant to the law a child may have more than one father.
- The application for a new trial must be made before the making of an order granting probation, before judgment, and before the commitment of a defendant.
- The arresting agency holds items seized on a search warrant until trial or further order of the court.
- The defendant’s address and date of birth are not required on an indictment or complaint.